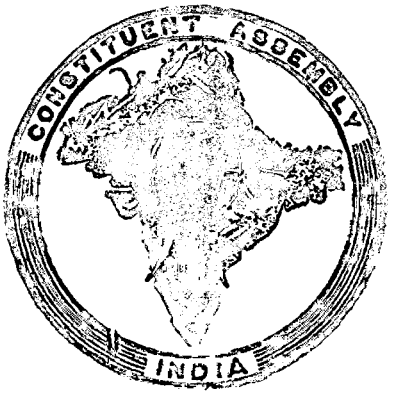
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Volume VII
No. 1

Thursday
4th November
1948

(CONSTITUENT ASSEMBLY DEBATES)

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 4th November 1948

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

PRESENTATION OF CREDENTIALS AND SIGNING THE REGISTER

The following Members presented their credentials and signed the Register:

(1) Shri H. Siddaveerappa (Mysore State);
(2) Mr. K. A. Mohammed (Travancore State);
(3) Shri R. Sankar (Travancore State);
(4) Shri Amritlal Vithaldas Thakkar [United State of Kathiawar (Saurashtra)];
(5) Shri Kaluram Virulkar [United State of Gwalior, Indore, Malwa (Madhya Bharat)];
(6) Shri Radhavallabh Vijayavargiya [United State of Gwalior, Indore Malwa (Madhya Bharat)];
(7) Shri Ram Chandra Upadhyaya (United State of Matsya);
(8) Shri Raj Bahadur (United State of Matsya);
(9) Thakar Krishna Singh (Residuary States);
(10) Shri V. Ramaiah (Madras State);
(11) Dr. Y. S. Parmar (Himachal Pradesh).

TAKING—THE PLEDGE

The following Member took the pledge.

Shri Syamanandan Sahaya.

HOMAGE TO THE FATHER OF THE NATION

Mr. President: Honourable Members, before we take up the items on the Order Paper, I bid you to rise in your places to pay our tribute of homage and reverence to the Father of the Nation who breathed life into our dead flesh and bones, who lifted us out of darkness of despondency and despair to the light and sunshine of hope and achievement and who led us from slavery to freedom. May his spirit continue to guide us. May his life and teaching be the torch-light to take us further on to our goal.

(All the Members stood up in silence.)

CONDOLENCE ON THE DEATHS OF QUAID-E-AZAM MOHAMMED ALI JINNAH, SHRI D. P. KHAITAN AND SHRI D. S. GURUNG

Mr. President: I ask you, Members, to stand in your places to pay our tribute of respect to Quaid-e-Azam Mohammed Ali Jinnah, who by his grim determination and steadfast devotion was able to carve out and found Pakistan

[Mr.. President]

and whose passing away at this moment is an irreparable loss to all. We send our heartfelt sympathies to our brethren across the frontier.

(The Members stood up in silence.)

Mr. President: Two Members have died since the Constituent Assembly met in its constitution-making function. They are Shri Debi Prosad Khaitan and Shri Damber Singh Gurung from Darjeeling. They represented their constituencies very faithfully and were of considerable help in our deliberations. I ask you to rise in your places to show our respect to their memory.

(The Members stood up in silence.)

AMENDMENTS TO CONSTITUENT ASSEMBLY RULES 5-A & 5-B

Mr. President: We shall now proceed to take up the items on the Order Paper. The first item is a motion by Mr. Govinda Menon and also by Shrimati Durgabai, of which notice has been given. I would ask Shrimati Durgabai to move it.

Shrimati G. Durgabai (Madras: General): Sir, I beg to move:

That the provisions mentioned in the Constituent Assembly Notification No. CA/43/Ser/48-I, dated the 2nd August 1948, be made part of the Constituent Assembly Rules, as shown in the amendments below, with effect from the 2nd August, 1948 :—

(i) Rules 5-A and 5-B—

For Rules 5-A and 5-B substitute the following Rule :—

"5-A. When a vacancy occurs by reason of death, resignation or otherwise in the office of a member of the Assembly representing an Indian State or more than one Indian State specified in column 1 of the Annexure to the Schedule to these rules, the President shall notify the vacancy and make a request in writing to the authority specified in the corresponding entry in column 3 of that Annexure to proceed to fill the vacancy as soon as may reasonably be practicable by election or by nomination, as the case may be, in the case of the States specified in Part I of the said Annexure, and by election in the case of the States specified in Part II of that Annexure :

Provided that in the case of the States specified in Part I of the said Annexure, where the seat was filled previously by nomination, the vacancy may be filled by election :

Provided further that in making a request to fill a vacancy by election under this rule the President may also request that the election be completed within such time as may be specified by him."

(ii) In Rule 51—

For clause (b) of Rule 51 substitute the following clause :

"(b) 'Returned candidate' means a candidate whose name has been published in the appropriate Official Gazette as a duly elected member of the Assembly and includes a candidate whose name has been reported to the President in the manner provided in paragraph 5 of the Schedule to these rules as a duly chosen representative of any Indian State or States specified in column 1 of the Annexure to that Schedule."

(iii) In the Schedule—

For paragraphs 3, 4, 5 and 6, substitute the following paragraphs :

"3. (1) When the representation allotted to the States, individual or grouped in the Assembly, or the grouping of the States for the purpose of such representation is altered by an order made under paragraph 2, or by an amendment of the Annexure to this Schedule, the President may, by order—

(a) re-assign members representing a State or States to such State or States as may be specified in the order;

(b) declare the seat or seats of any member or members of the Assembly representing any State or States affected by an order under paragraph 2 or an amendment of the Annexure to this Schedule, as the case may be, to be vacant.

(2) Any member who has been re-assigned to a State or States by an order made under clause (a) of sub-paragraph (1) and whose seat has not been declared vacant under clause (b) of that sub-paragraph shall as from the date of the order be deemed to be a duly chosen representative of such State or States.

(3) A member whose seat is declared vacant by an order made under clause (b) of sub-paragraph (1) shall, if it is so specified in the order, continue to hold office as member of the Assembly until his successor has been duly elected and has taken his seat in the Assembly.

"4. (1) Not less than fifty per cent. of the total representatives of the States specified in column 1 of Part I of the Annexure to this Schedule in the Assembly shall be elected by the elected members of the legislatures of the States concerned, or where such legislatures do not exist, by the members of electoral colleges constituted in accordance with the provisions made in this behalf by the authorities specified in the corresponding entries in column 3 of that Part.

(2) All vacancies in the seats in the Assembly allotted to the States specified in column 1 of Part II of the Annexure to this Schedule shall be filled by election and the representatives of such States to be chosen to fill such seats shall be elected by the elected members of the legislatures of the States concerned, or where such legislatures do not exist, by the members of electoral colleges constituted in accordance with the provisions made in this behalf by the authorities specified in the corresponding entries in column 3 of that Part.

5. On the completion of the election or nomination, as the case may be, of the representative or representatives of any State or States specified in column 1 of the Annexure to this Schedule in the Constituent Assembly, the authority mentioned in the corresponding entry in column 3 of that Annexure shall make a notification under his signature and the seal of his office stating the name or names of the person or persons so elected or nominated and cause it to be communicated to the President of the Assembly."

Sir, before I commend my motion to the House for its acceptance, I wish to say a few words of explanation as to why and how these amendments to the rules have become necessary.

Sir, Rules 5-A and 5-B of the Constituent Assembly Rules lay down the procedure for filling a casual vacancy in the office of a member representing an Indian State or more than one Indian State and the Schedule to the Rules prescribes the allocation of seats in the various States or groups of States and the manner of choosing the States representatives and also the method of appointing conveners for purposes of conducting election. These Rules 5-A and 5-B were based on conclusions reached by the two Negotiating Committees set up by the Chamber of Princes and also by the Constituent Assembly.

Sir, since then, as it is common knowledge, many changes of a far-reaching character have taken place and these changes have taken place both in the constitutional as well as in the administrative set up of these states. For example, certain States have formed themselves into Unions and certain others have merged into neighbouring provinces and still certain others have been constituted into Centrally Administered Areas.

Sir, these changes in their turn affected radically in the case of some the existing scheme of representation in the Constituent Assembly. Consequently, it became necessary to re-group these several States and to re-allocate seats among them and also change the conveners for the purpose of conducting elections and also make necessary changes in the rules of the Constituent Assembly. All these matters were considered at a meeting of the Honourable the President and of the Honourable the Minister of States and also the Rajpramukhs and the Premiers of the Union and the States concerned and also the Premiers of various provinces affected by these changes and also of the officials of the Secretariat of the Constituent Assembly and of the States Ministry; and the decisions reached at that Conference are now embodied in these provisions which are now sought to be incorporated in the Constituent Assembly Rules.

Now, Sir, the most important feature of these changes in the provisions is that in the case of newly formed group or Union of the States—Cutch and

[Shrimati G. Durgabai]

Junagadh, which have been given separate representation in the Assembly—all the vacancies in the seats are to be filled by election by the elected members of the Legislatures of the States or where such legislatures do not exist, by any other Electoral College which is set up for that purpose.

Under the old Rules some of them could be filled by nomination. Sir, as you have already noted the various changes, I do not think that I need elaborate these points. I commend my motion to the House for its acceptance. Sir, I move.

Mr. President: I have received notice of certain amendments to this motion. Mr. Kamath.

Shri H. V. Kamath: (C. P. & Berar: General): Mr. President, Sir, I move:

"That in sub-para. (1) of the proposed paragraph 3 of the Schedule, for the words 'to the States, individual or grouped in the Assembly' the words 'in the Assembly to the States, individual or grouped' be substituted."

That is to say, if the amendment is accepted, it will read thus: Now it reads, "When the representation allotted to the States, individual or grouped in the Assembly". In the place of this, it will read, "When the representation allotted in the Assembly to the States, individual or grouped....." I do not think I need speak much on this amendment. It is self evident and the meaning that is sought to be conveyed by the paragraph is as represented in my amendment. Certainly, the States individual or grouped as they are, is not for Assembly purposes. Therefore, it should be "representation allotted in the Assembly to the States, individual or grouped." This is the first amendment.

Sir, the second amendment runs thus:

"That in sub-para. (3) of the proposed paragraph 3 of the Schedule, for the words 'is declared vacant' the words 'has been declared vacant' be substituted."

This is purely, if I may say so, a linguistic amendment. I think it refers to the state of affairs arising after a seat has been declared vacant. The wording "when a seat has been declared vacant" is more correct and more accurate.

I therefore commend these amendments of mine for the acceptance of the House.

Sir, I wish to speak on the motion. May I speak?

Mr. President: Yes.

Shri H. V. Kamath: Sir, I seek some clarification on certain points that have arisen from the motion moved by my honourable friend Shrimati Durgabai. Sir, the potential strength of this Assembly is 324. I am given to understand that the actual strength today is 303. Twenty one members who are to represent Hyderabad, Kashmir and Bhopal are not present with us. Even as regards the remaining 303, the papers yesterday brought us the news that the Patiala and East Punjab States Union have not elected their representatives to this Assembly. I do not know why these States or Union of States or groups of States should continue to be unrepresented in this last and most important session of the Constituent Assembly. As regards Kashmir, I agree there are difficulties. As regards Hyderabad which now forms one of the States specified in Part I of the Annexure, it takes top rank among the States. I do not see why we should not call upon the Ruler of Hyderabad to elect or to elect and nominate as the case may be in accordance with the provisions of this resolution, and send representatives to take their place in this Session as early as possible. In view of the recent events that have taken place, a happy denouement—I hope the House is in agreement with me that we have had a happy termination of the Hyderabad episode—we wish to welcome

our friends, our colleagues from Hyderabad as soon as possible in this Assembly. As regards Bhopal, I do not know what difficulties stand in the way, what stumbling block there is in the way, what obstacle has to be surmounted, so far as the participation of Bhopal in this Assembly is concerned. I would plead with you and I would request that the Bhopal authorities should also be called upon at once to send their members to this Assembly with the least possible delay.

Then, Sir, the report which appeared in the press yesterday as regards Patiala and East Punjab States Union was not very clear. It alleged all sorts of things against the administration and against the Ruler; but, whatever it may be, I think it is high time that this Union of Patiala and East Punjab States should be called upon to send their representatives to this last session of the Constituent Assembly.

There is another point which I would like to draw your attention to. In the Rules that have been framed by us during the previous sessions, we have stated—I refer to Rule 5 sub-rule (2)—"Upon the occurrence of a vacancy, the President shall ordinarily make a request in writing to the Speaker of the Provincial Legislative Assembly concerned, or as the case may be, to the President of the Coorg Legislative Council, for the election of a person, for the purpose of filling the vacancy as soon as may reasonably be practicable." Here, now that in some of the States mentioned in Part I of the Annexure—I am sorry I cannot say off hand which States have got elected legislature functioning—take for instance, Mysore; it is a big State and it has already sent its representatives to this Assembly—so far as such States are concerned, I see no reason why in future, instead of the Ruler, the Speaker or President of the Assembly should not be requested to fill the vacancies that may arise. It may be argued against this that the Rule as it stands, 5-A provides for the Ruler being the authority in this case. But, as we are amending the Rules, why not amend certain provisions of these Rules so as to make them more in conformity with democratic practice and democratic traditions? Therefore, I would ask my honourable friend Shrimati Durga Bai to explain why, in the case of those states where we have got Assemblies functioning, the Speaker or the President should not be the authority instead of the Ruler. On this point, I would ask some more light from the mover of the motion.

Sir, before I resume my seat, I commend my two amendments to this motion for the acceptance of the House. Thank you, Sir.

Mr. President: Mr. Sidhwa.

Shri R. K. Sidhwa (C.P. & Berar: General): Mr. President, Sir, my amendment was—

"That in sub-para. (1) of the proposed paragraph 4 of the Schedule, delete the words 'Not less than fifty per cent' of and for the words 'the total representatives' the words 'The total number of representatives' be substituted."

The object of my amendment was that while we have done away with the nomination system in our Constitution, it would not be fair to allow the States, particularly the Rulers to nominate the 50 per cent. I therefore, with that object in view and just in conformity with our decision for abolishing the nominations, suggested the abolishment of this also. I however understand that an arrangement has been arrived at between the Rulers and the people of the State and the States people have agreed to this arrangement being continued and I am also told that although this is there, the representatives are all elected by the people themselves. If that is so as I understand it is so, I do not propose to move this amendment.

Mr. President: Do you move the amendment or not?

Shri R. K. Sidhwa: I do not move it, Sir.

Mr. President: All the amendments of which I have notice, so far as this motion is concerned, have been moved. I have received a complaint from one Member that the agenda and amendments have been circulated here and he did not get them before and so he has not been able to give notice of amendments and he wants that the discussion be adjourned. I understand from the Secretariat that the agenda and other papers were circulated some days ago but they were sent to the addresses that were then known to the office and it is possible that the Members during the course of transit have not been able to get the papers that were sent to them and by way of caution a second copy has been supplied here to-day. It is not as if the agenda and the papers have not been circulated. Only the second copies have been given to-day. I do not think there is any ground for adjourning the discussion of this motion particularly because after all it is more or less a motion of a formal nature, because we have already acted upon these Rules and they are not likely to be acted upon in the future when this session of the Assembly is over.

Shri Mohanlal Gautam (United Provinces: General): *[I have no objection in complying with your order. But I submit that the information supplied to you by the office is incorrect. Many of the Members have not received copies of the agenda. Not I alone but two or three of my colleagues also who are present here have not received it. I am in greater difficulty as my telephone also has been disconnected even though they had already taken from me the subscription for the whole year. Twice I have referred this matter to the Deputy Minister for Communications but telephone connection has not yet been restored. When I came here I telephoned from another place to the Deputy Secretary, Constituent Assembly, and informed him that no copy of the agenda had been received by me and that the telephone connection also had not been restored This is the situation of the Members and I would like to make my protest against it. Had it been so with me alone, you could have adopted this course. But there are many members present here who have not received the agenda. The Deputy Minister Shri Khurshed Lal is also one of them. He also denies having received a copy of the agenda. I don't know how it was circulated but even he complains of not having received it. Twice I complained to him that my telephone connection had not been restored even though the subscription money had been realised by them for the whole year. You have reduced us Members to this miserable plight. As for the agenda, I am not th eonly Member to complain about it. Many Members have not received it. There are important items on the agenda and as a protest I demand the postponement of its consideration.]

Mr. President: *[Copies of the agenda were sent to the Members by the office. Whether it did reach the Members or not is a matter for Shri Khurshed Lal to answer. It is also his responsibility to see whether telephone connections have been provided or not. I do not think that there is any important reason to adjourn the House. If any Member wants to speak on this matter he may do so.]

Mr. Hussain Imam (Bihar: Muslim): *[I would like to suggest that you are empowered to admit the amendments which are, even now, received from Honourable Members. That would leave no room for grumbling.]

Mr. President: *[As I have not received any amendment as yet, the question does not arise.]

Shri Shyamanandan Sahaya (Bihar: General): *[Mr. President, I request that those amendments which have been moved should be considered if they need consideration. But first of all a chance should be given to the mover . . . . . .].

* [ ] Translation of Hindustani speech.

Mr. President: *[Had I received any amendment I would have allowed it to be moved in the House. But no amendment has been received. Now, you want that this discussion should be postponed so that there might be an opportunity to move an amendment. But as yet I have no amendment before me.]

Shri Shyamanandan Sahaya: *[Mr. President, in this connection it is submitted that your orders are binding on all. If the copy of the agenda is lost in transit, the purpose of sending it,—and it is that the Members may go through it and may form their opinion—is defeated. Consequently if it could not reach the Member or if there is any delay or error in its despatch from the Assembly office, and thereby if any Member did not receive the agenda, then in my opinion it requires consideration whether the resolution may be taken up for consideration on that day or not. I want to draw your attention to this fact.]

Mr. President: *[I do not think it necessary at this stage, for such questions are not before us as require prolonged discussions and postponement of the debate to some other day and stoppage of our proceedings today.]

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, Sir, I do not have to make the complaint that some of the honourable Members of this House have made, although I must say that I did not get the agenda before yesterday, and that is the reason why it was not possible for me—my stenographer not having arrived—to send in my amendments to the various Rules. It is quite clear that the Rules are pretty lengthy and therefore the amendments are also likely to be of a similar nature. I hope therefore that you will kindly pardon my not having sent in my amendments and the few amendments that I propose would be considered by the Honourable Mover of the Motion. The first amendment I would suggest is—

"In the first part of Rule 5-A instead of 'an Indian State or more than one Indian State' substitute the words 'one or more Indian States'."

I personally think it is better English in that way. My second amendment is—

"Instead of the words 'make a request' the word 'direct' be substituted."

It should be possible for you Sir, to direct the authorities specified in the corresponding entry in column 3 of that Annexure. I do not think it is in consonance with the dignity of the office you hold or the position of this Constituent Assembly that it should be necessary to request a petty State or the authority Assembly are summoned by you. I would therefore suggest the adoption of existing therein to hold the elections. We, as Members of the Constituent the above amendment.

Similar words are used in the second proviso. There also the word 'request' has been used. That also should be changed to 'direct'.

There is also one more amendment I would suggest so far as the second proviso is concerned. I suggest that—

"The proviso as it stands be substituted by the following *viz.* 'Provided further that in directing to proceed to fill a vacancy by election under this Rule the President may also direct that the election be completed by a certain date'."

The change is to replace the words "making a request to fill" by the words "directing to proceed to fill". The word "request" is changed into "direct," and the concluding words—'within such time as may be specified by him'—are proposed to be changed by the words "by a certain date".

* [ ] Translation of Hindustani speech.

[Dr. P. S. Deshmukh]

The wording in paragraph 3 (1) on page two may read better if it were put as follows:

"When the representation allotted to any States, jointly or individually, in the Assembly or the grouping of the States for the purpose of such representation is altered by an order made under paragraph 2, or by an amendment of the Annexure to this Schedule, the President may by order— . . . . ."

The alteration would be to change the word "the" into "any", and to omit the words "individual or grouped in the Assembly", by merely saying "jointly or individually".

This amendment of mine is very similar to the one moved by Mr. Kamath. I think he was somewhat hesitant in suggesting a wholesale alteration of the clause. That is why the suggestion he has made, although it has the same intention, does not express it so correctly as the suggestion made by me. I hope, Sir, it will be possible for the honourable Mover to consider the various amendments suggested by me, and if possible to accept them.

Shri Biswanath Das (Orissa: General): Sir, I have just given notice of an amendment. Before moving it I would like to explain the position as it is today.

In part 1 to the Annexure, Mayurbhanj State has been mentioned with one representative and the Returning Officer is the Ruler of Mayurbhanj. But it has been decided by the States Ministry that the State of Mayurbhanj cannot stand singly by itself and it has been agreed that it shall merge into the province of Orissa, along with the twenty-three other States that have already merged.

Mr. President: Has the Mayurbhanj State already merged or is it a proposal?

Shri Biswanath Das: I believe they have signed a certain agreement and they are going to hand over the State to the Government of India and that an Administrator has been already appointed and that he is going to take charge of the State. Under these circumstances, I believe there is no justification for treating Mayurbhanj State as a separate identity, and again to recognise the Ruler of Mayurbhanj State as the Returning Officer. I do not know, and I cannot say whether the Government of India have actually intimated to the Government of Orissa that Mayurbhanj State is to merge in Orissa. But this much I can assure you, and through you the Honourable Members of the Constituent Assembly that this is the expressed view of the Government of India that it shall be merged into the province of Orissa. Therefore, there is absolutely no purpose in bringing in something which will undo what has been already done and decided by the States Ministry with the full concurrence of the State of Mayurbhanj, the people and also the province of Orissa.

Therefore, Sir, I beg to move an amendment, which is (I have given notice of it just now):

"Omit Mayurbhanj with its representation of one and the Ruler of Mayurbhanj as the Returning Officer from Part-1 of the Annexure."

I further move:

"That the State of Mayurbhanj be added to the Orissa States in Part II of the said Annexure, substituting 24 for 23 and also under the column of representation substituting 5 for 4, including 1 from the State of Mayurbhanj, and the Governor of Orissa to continue as the Returning Officer."

This is the complete amendment that I place before the Honourable Members of the Constituent Assembly and think that it is a necessity.

If you propose to give separate representation and a separate identity to Mayurbhanj, that means you propose to perpetuate the independent existence of smaller States, a policy which has been refuted and not accepted by the States Ministry and the Government of India. Therefore, my amendment is just to give effect to the very idea which has been accepted, adumbrated and

followed in principle and in practice by the States Ministry and the Government of India.

Mr. President: I may point out to Members that so far as the States are concerned, the question has been in a state of flux There have been so many changes going on from day to day that it has been difficult to keep pace with them. The proposal is based upon the recommendation of the States Ministry, and the proposal was reached at a conference at which not only the Prime Ministers of all the provinces concerned but also of the States concerned and Rajpramukhs were present, and there were representatives of the States Ministry as also of the Constituent Assembly, and these proposals are in conformity with recommendations of that Conference. If there has been any change since then, we have no notice of that change. Besides, there will be no difficulty in altering any of the rules subsequently if a change has taken place. So I would suggest to Shri Biswanath Das that he need not apprehend that there is any question of perpetuating smaller States. At the moment we are proceeding upon facts that we know and we are recognising those facts and making the rules in conformity with those facts. As soon as a change in those facts takes place, and we are informed of that change, we shall change the rules accordingly. So I would suggest to him not to press his amendment at this stage. We can take up the matter as soon as the States Ministry is in a position to tell us that this ought to be changed.

Shri Biswanath Das: An officer of the States Ministry is here. These are the salient facts. I do not dispute them but I beg of him not to dispute the facts that I have placed before him.

Mr. President: I do not dispute his facts. I only say that I have received no intimation from the States Ministry to that effect and therefore we are proceeding upon what we have from the States Ministry. As soon as we have information, there will be no difficulty in changing the rules. That can be done at any sitting.

Shri Biswanath Das: You are going to take charge of the State. The moment newspapers published that the Constituent Assembly has given separate representation to the State I assure you that there will be tremendous trouble to be faced not by me or the people of Orissa but by the very administrator that is going to be appointed by the Government of India. Under these circumstances I appeal to you, knowing as you do the difficulties of the situation and as a person having an intimate knowledge of the areas and the people concerned, not to tread on dangerous ground. I do not want to press my amendment. I have only brought this matter to your notice as also to the notice of the Constituent Assembly.

Mr. President: I think the newspapers will not only publish the fact that Mayurbhanj has been given separate representation but also the statements which I have made and you have made. Along with these statements the information by itself will have no effect of the kind that you apprehend and I would therefore suggest to the honourable Member not to press his amendment.

Shri Ram Sahai [United State of Gwalior, Indore, Malwa (Madhya Bharat)]. *[Mr. President, I would like to know if an amendment which is contrary to the principles accepted by the Negotiating Committee can be moved to the amendment now before us. For example 50 per cent. is fixed in it. Is it possible to move an amendment that instead of 50 per cent. all the members should be elected or that they should be nominated by the Raj Pramukhs or that the members must be elected on the basis of the electoral rolls that had been prepared before in the States? I would like to know whether an amendment can be moved which goes beyond the principles accepted by the Negotiating Committee.]

* [ ] Translation of Hindustani speech.

Mr. President: I think we have to be very cautious in dealing with the States. We are proceeding on the basis of agreements entered into with the States and here we should not say or do anything which may have the effect of going back upon any agreement which has been made with the States. All these amendments are based upon agreements which have been made between the States Ministry and the States concerned. The House will remember that originally there was one set of agreements but that has become out of date and therefore we have a second set of agreements. All these amendments are based upon these agreements and I would therefore suggest that nothing should be done to go back upon any of the agreements that have been entered into.

I would ask Mr. Sidhwa not to press his amendment. . . . .

Several Honourable Members: He has not moved it.

Shri S. Nagappa (Madras: General): Sir, I beg leave of the House to move the amendment of which I have given notice just now. I am in agreement with the original motion but as regards the Annexure Part I, third column (viz, Authority for the purpose of the choosing of representatives in the Constituent Assembly) I propose to move an amendment to the word "Ruler" of Hyderabad, Mysore, Kashmir and so on. I would like to say that the rulers today do not have the real ruling power, as it has been transferred to the people of the State, especially since August 15th 1947. So, Sir, I think the ruler of any State should not be made the authority for the purpose of choosing representatives in the Constituent Assembly, as he has not got the authority to choose. What is the good of calling someone an authority who really has not got that authority? To me it does not look to be in order. I shall be thankful if the Honourable the Mover accepts my amendment:

"That for the word 'Ruler' in column 3 of Annexure Part I the word 'people' be substituted."

If you find that this is not in order then for instance, the Speaker of any Assembly, which has been elected by the people of that State, occupies a more important place than that of the Ruler. No doubt the Ruler is there as a nominal figurehead but the real person who rules is either the Prime Minister who has been duly elected by the people of that State or the Speaker of the Legislative Assembly, wherever there is one. So, Sir, I would request that the Honourable the Mover would accept this simple amendment. I have proposed a simple amendment and I need not explain it further. I hope the House will be good enough to accept it.

Mr. President: I might point out that the Honourable Member's amendment is wholly misconceived. It is not as if the Ruler is going to nominate the representatives. The Rulers have to be addressed for the purpose of getting the representatives elected by the bodies who have the right to elect them. The Ruler does not come in in any other way.

Shri S. Nagappa: That is exactly my point. You are addressing the Ruler but the Ruler has not got any authority to elect. What is the good of asking a person who does not possess the power? The actual power is not with the Ruler but with the people of the state. So the representatives should be elected by the people of the State—either the Speaker of the Assembly wherever there is an Assembly functioning or the Prime Minister or the Raj Pramukh who has been duly elected. They will be the proper authority. Even for the sake of form it should not be there.

Mr. President: I have pointed out the position to the Honourable Member but if he wants to press his amendment.....

Shri S. Nagappa: There is no question of pressing the amendment. I have understood, Sir, your point. You have been kind enough to enlighten me that the ruler is only a figurehead and is meant for the purpose of addressing

someone.. But what I say is, what is the good of addressing a Ruler who has not got the authority and who has transferred his authority to the people of the State?

Mr. President: Every order of the Government of India also goes in the name of the Governor-General, although it is the Ministers who pass the orders. The position is exactly similar.

Shri S. Nagappa: Sir, I accept your advice and I leave it to you.

Shrimati G. Durgabai: Mr. President, I do not think I have much to say by way of replying to the points raised by several Honourable Members of the House and I am thankful to you, Sir, that you had taken upon yourself the task of explaining some of the points raised by Honourable Members. I would not refer to the points raised by Shri Biswanath Das and Shri Nagappa, because the Honourable President has sufficiently dealt with those points.

With regard to the amendment moved by Dr. P. S. Deshmukh, I think the existing expression, 'make a request in writing' is more happily worded than that suggested by him and is also very courteous, I do not think there is need for a change. His other amendment also I cannot accept for the same reason.

With regard to the point raised by Mr. Kamath in his amendments, I may say that I appreciate it and have great pleasure in accepting his amendments. They are really verbal amendments and I accept them.

He has raised the question of Hyderabad and Kashmir in this connection. I do not think it is for me to say anything on the points he has raised about those States; but I feel that those points are irrelevant to the motion I have moved here. I commend my motion to the House for its acceptance.

Shri H. V. Kamath: Mr. President, I have not moved any amendment and therefore the question of irrelevancy does not arise, I only wanted to know whether Hyderabad, Bhopal and Kashmir would send their representatives to the Assembly. I only wanted some light and clarification on the point.

Mr. President: I shall put the amendments to vote. The amendment of Mr. Kamath runs thus:

"That in sub-para (1) of the proposed paragraph 3 of the Schedule, for the words" 'to the States, individual or grouped in the Assembly', the words 'in the Assembly to the States, individual or grouped' be substituted.

This has been accepted by the mover.

The amendment was adopted.

Mr. President: The other amendment of Mr. Kamath, viz., "That in sub-para. (3) of the proposed paragraph 3 of the Schedule, for the words 'is declared vacant' the words 'has been declared vacant' be substituted" is now for the vote of the House. This has also been accepted by the Mover.

The amendment was adopted.

Mr. President: Then there are the amendments of Dr. Deshmukh. So far as the wording of one of them at any rate is concerned, it has been already accepted when Mr. Kamath's amendment was accepted. The other amendment is only a question of taste whether we should make a direction or a request. As Dr. Deshnukh has not withdrawn it, I shall put it to vote. The amendment is:

"In the place of the word 'request' the word 'direct' should be used."

The amendment was negatived.

Mr. President: I shall now put the amendment of Dr. Deshmukh to Clause 3 (i) of the Schedule to vote.

The amendment was negatived.

The amendment of Mr. Biswanath Das was, by leave of the Assembly withdrawn.

Shri S. Nagappa's amendment was, by leave of the Assembly, withdrawn.

Mr. President: The motion, as amended, is for the vote of the House.

Shri H. V. Kamath: Would you please tell us whether Hyderabad and Kashmir would send their representatives to this Assembly?

Mr. President: I am not in a position to give any information on that point. The Government, if they liked, would have given you the information by now.

The motion, as amended, is for the vote of the House.

The motion, as amended, was adopted.

Mr. President: Srimathi Durgabai may now move her second motion.

AMENDMENT TO THE ANNEXURE TO THE SCHEDULE

Shrimathi G. Durgabai: Mr. President I beg to move the following motion:

"That the provisions mentioned in the Constituent Assembly Notification, No CA/43/Ser/48-II, dated the 3rd August 1948, be made part of the Constituent Assembly Rules, as shown in the amendments below, with effect from 3rd August 1948."

Annexure to the Schedule—

For the Annexure to the Schedule substitute the following Annexure :—

ANNEXURE

PART I

Name of State or States	Number of seats allotted in the Constituent Assembly	Authority for the purpose of the choosing of representatives in the Constituent Assembly
1	2	3
HYDERABAD	16	Ruler of Hyderabad.
MYSORE	7	Ruler of Mysore.
KASHMIR	4	Ruler of Kashmir
BARODA	3	Ruler of Baroda.
TRAVANCORE	6	Ruler of Travancore.
COCHIN	1	Ruler of Cochin.
	2	Ruler of Jodhpur.
JAIPUR	3	Ruler of Jaipur.
BIKANER	1	Ruler of Bikaner.
BHOPAL	1	Ruler of Bhopal.
KOLHAPUR	1	Ruler of Kolhapur.
MAYURBHANJ	1	Ruler of Mayurbhanj.
SIKKIM AND COOCH BEHAR	1	Ruler of Cooch Behar.
TRIPURA MANIPUR KHASI STATES	1	Ruler of Tripura.
RAMPUR BENARES	1	Ruler of Rampur.
TOTAL	49	

Name of State or States	Number of seats allotted in the Constituent Assembly	Authority for the purpose of the choosing of representatives in the Constituent Assembly.
	2	3
ORISSA STATES		
Athgarh		
Athmalik		
Bamra		
Baramba		
Baudh		
Bonai		
Daspalla		
Dhenkanal		
Gangpur		
Hindol		
Kalahandi		
(23) Keonjhar	4	Governor of Orissa.
Khandpara		
Narsinghpur		
Nayagarh		
Nilgiri		
Pal Lahara		
Patna		
Rairakhol		
Ranpur		
Sonepur		
Talcher		
Tigiria		
CENTRAL PROVINCES AND BERAR STATES		
Bastar		
Changhbhakar		
Chhuikadan		
Jashpur		
Kanker		
Kawardha		
(15) Khairagarh		
Korea	3	Governor of Central Provinces and Berar.
Nandgaon		
Raigarh		
Sakti		
Sarangarh		
Surguja		
Udaipur		
Makrai		
MADRAS STATES		
Banganapalle	1	Governor of Madras.
Pudukkotai		
BOMBAY STATES		
Rajpipla		
Palanpur		
Cambay		
Dharampur		
Balasinor		
Baria		
Chhota Udepur		
Sant	4	Governor of Bombay
Lunawada		
Bansda		
Sachin		
Jawhar		
Danta		
Janjira		
Sangli		

[Shrimati G. Durgabai]

PART II—*contd.*

Name of State or States	Number of seats allotted in the Constituent Assembly.	Authority for the purpose of the choosing of representatives in the Constituent Assembly
BOMBAY STATES—*contd.*		
Savantvadi Mudhol (35) Bhor Jamkhandi Miraj (Sr.) Miraj (Jr.) Kurundwad (Sr.) Kurundwad (Jr.) Akalkot Phaltan Jath Aundh Ramdrug Idar Radhanpur Sirohi Savanur Wadi Vijayanagar Jambughoda 271 minor states, (thanas, etc.)	4	Governor of Bombay.
HIMACHAL PRADESH		
Bashahr Sirmur Chamba Mandi Suket Baghal Baghat Balsan Bhajji (21) Bija Darkoti Dhami Jubbal Keonthal Kumharsain Kunihar Kuthar Mahlog Mangal Sangri Tharoach	1	Chief Commissioner of Himachal Pradesh.
United State of Kathiawar (Saurashtra)	4	Rajpramukh of the State.
United State of Matsya	2	Rajpramukh of the State.
United State of Rajasthan	4	Rajpramukh of the State.
United State of Vindhya Pradesh	4	Rajpramukh of the State.
United State of Gwalior, Indore, Malwa (Madhya Bharat)	7	Rajpramukh of the State.
Patiala and East Punjab States Union	3	Rajpramukh of the Union.
Cutch	1	Chief Commissioner of Cutch.
Junagadh	1	Administrator of Junagadh.

PART II—*concld.*

Name of State or States.	Number of seats allotted in the Constituent Assembly.	Authority for the purpose of the choosing of representatives in the Constituent Assembly
1	2	3
RESIDUARY STATES:		
Jaisalmer	1	Such authority as may be appointed by the Government of India.
Sandur	1	
Tehri-Garhwal	1	
Bilaspur	1	
BIHAR STATES:		
Seraikela	1	
Kharsavan	1	
EAST PUNJAB STATES		
Loharu	1	
Pataudi	1	
Dujana	1	
TOTAL	40	
GRAND TOTAL OF PARTS I AND II	89	

Shri H. V. Kamath: Mr. President, the amendment I have given notice of is an exteremely simple one and a purely verbal one intended to add the definite article 'the'. It reads:

"That in part II of the proposed Annexure to the Schedule, for the words 'Governor of Central Provinces and Berar' in the 3rd column under the heading 'Central Provinces and Berar States', the words 'Governor of the Central Provinces and Berar' be substituted."

I would invite your attention and the attention of the House to the name by which my province is known in official documents and records. In our draft Constitution, of which we have all got copies, in Schedule I, Part I, page 159 where the list of the various provinces has been given, you will find my province described as the Central Provinces and Berar.

Mr. President: *I do not want you to adduce arguments in support of this amendment.*

Shri H. V. Kamath: I move the amendment and commend it for the acceptance of the House.

Mr. President: Do you accept that?

Shrimati G. Durgabai: I accept that.

Mr. President: The amendment is that the word "the" be added before the words "Central Provinces and Berar".

The amendment was adopted.

Mr. President: The motion, as amended, is now put to vote.

The motion, as amended, was adopted.

Addition of New Rule 38-V.

Shrimati G. Durgabai: Sir, I beg to move that the following amendment to the Constituent Assembly Rules be taken into consideration:

After rule 38-U insert the following—

"38-V. When a Bill referred to in Rule 38-A is passed by the Assembly, the President shall authenticate the same by affixing his signature thereto. When the Bill is so authenticated it shall become an Act and shall be published in the *Gazette of India*."

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[Shrimati G. Durgabai]

Sir, before I commend my motion for the acceptance of the House, I consider it my duty to offer a few words of explanation as to why this amendment has become necessary. Sir, I am sure that Honourable Members are aware that during the last session of the Constituent Assembly when it met on the 27th January, certain amendments were proposed and accepted by this House to the rules of the Constituent Assembly, and one of those amendments was to introduce a new rule 38-V laying down the procedure for passing of the Bills referred to in Rule 38-A. Sir, that proposed rule 38-V raised a good deal of controversy and objections were raised by some Honourable Members on the ground that a Bill passed by the Constituent Assembly for amending the Indian Independence Act or the Government of India Act 1935 as adapted by that Act should not be subject to the assent of the Governor-General since such a procedure might detract from the sovereign character of the Assembly. Another objection was raised on the ground that, if that rule was adopted, the consequence would follow that the Governor-General might give or withold his assent even to a Bill seeking to amend the existing constitution. Another objection was raised on the ground that there should not be any difference between the procedure to be adopted for passing the draft Constitution and for passing a Bill seeking to amend the existing Act. These objections were discussed and after prolonged discussion, the suggestion made by Mr. Kamath to refer the proposed rule back to the Draft Commmittee for re-examination in the light of the objections raised, was accepted. This suggestion was accepted by the House and the rule was referred back to the Drafting Committee. The Drafting Committee has considered this rule and their fresh proposal is before the House. Sir, this new rule dispenses with the assent of the Governor General to any Bill passed by the Constituent Assembly under Rule 38-A. The original rule reads thus:

"When a Bill referred to in Rule 30-A is passed by the Assembly, a copy thereof signed by the President shall be submitted to the Governor-General for his assent. When the Bill is assented to by the Governor-General, it shall become an Act and shall be published in the *Gazette of India*."

I think Members have understood the significance of the change proposed and that I need not elaborate this point. I commend my motion for the acceptance of the House.

Mr. President: Mr. Kamath has tabled an amendment to this to substitute the words "has been" for the word "is".

Shri H. V. Kamath: Mr. President, Sir, I move:

"That in the proposed rule 38-V for the words 'when the Bill is so authenticated' the words 'When the Bill has been so authenticated' be substituted."

This amendment, Sir, is entirely similar to the one which has been accepted by the House with regard to another motion moved by my honourable Friend, Mrs. Durgabai. I think it will be happier and more in consonance with the rules of idiom and usage to substitute the words "has been" for the word "is" so that, if the amendment is accepted, the proposed rule will read:

"When a Bill referred to in rule 38-A is passed by the Assembly, the President shall authenticate the same by affixing his signature thereto. When the Bill has been so authenticated, it shall become an Act . . . ." etc.

I commend this amendment for the acceptance of the House.

Mr. President: The motion has been moved and also an amendment to that. If any Member wishes to speak on the motion, he may do so now.

Shrimati G. Durgabai: I accept the amendment.

Mr. President: It seems there is nobody who wishes to speak on the motion. The mover has accepted the amendment. I first put the amendment to vote.

The amendment was adopted.

Mr. President: The motion, as amended, is now put to vote.

The motion, as amended, was adopted.

PROGRAMME OF BUSINESS.

Mr. President: We will now go on to the next item on the agenda but before doing so, I would like to explain to the House the procedure which I propose to follow in dealing with the Draft Constitution. Members are aware that the Draft Constitution was prepared by a Drafting Committee which was appointed by this House and the Draft was placed in the hands of Members nearly eight months or more ago. Members were asked to send in any suggestions or amendments which they wished to make and a large number of suggestions and amendments were received not only from Members but also from the public and public bodies, provincial governments and so forth. The Drafting Committee has considered all these suggestions and amendments and they have redrafted many of the articles in the light of the suggestions made by either Members or the public. So we have now got not only the Draft as it was originally prepared, but also the re-draft of a number of the Articles which the Drafting Committee had prepared in the light of suggestions received. These have been placed in the hands of Members. What I propose now to do is to take up each Article after we, of course, have passed this motion for consideration and I shall take all these amendments of which notice has been given already as having been given in time, so that Members who have already given notice of amendments need not repeat the notice after the motion for consideration has been adopted. I will also give to Members two days more for giving notice of any further amendments which they wish to propose to the Articles. And then, I propose not to accept any other amendments, unless they are of such a nature that it becomes necessary to accept them. Of course, there will be amendments which may be consequential and those will have to be accepted. There may also be amendments which for other reasons may be considered by the House to be of such a nature that they should be considered; I will not burke discussion of those amendments; I shall have them also. But ordinarily I would ask the Members to confine themselves to the amendments of which we have already got notice and they are, I believe, about a thousand in number. In this way we might economise time without in any way affecting our efficiency and without in any way putting any check on free discussion of all the Articles of the proposed draft. This is what I propose to do, of course, subject to what the House lays down. I think this is quite reasonable in view of the fact that Members have had such a long time to consider; and that they have considered in detail the draft is apparent from the fact that we have already got notice of about a thousand amendments, and if by any chance any amendment has been overlooked and if any member feels its consideration to be necessary, we shall take it, but ordinarily I will not take any further amendments after this. What I propose is that we discuss the motion, which Dr. Ambedkar will move, for two days, that is, today and tomorrow, when we sit both in the morning and in the afternoon and we give Saturday and Sunday for giving notice of amendments to the members. All the amendments of which we have already recieved notice and of which we shall have received notice by 5 o'clock on Sunday will be tabulated, printed and placed in the hands of Members by Monday, and then we proceed with the discussion of the amendments from Tuesday. That is the programme which I have outlined in my mind.

There is another thing which I might tell Members. There is a motion of which notice has been given and there is also an amendment of which notice has been given that this House should adjourn discussion of the Consti-

[Mr. President]

tution altogether and a new House on adult franchise and on non-communal lines should be elected and that House should deal with the question of framing the Constitution. I do not know if the House will be prepared to throw away all that we have been doing during the last two years, particularly because there is in the Draft an article which gives a somewhat easy method of amending the Constitution during the early years after it comes into force and if there is any lacuna or if there is anything which needs amendment, that could easily be done under the provision to which I have just made reference, and it is, therefore, not necessary that we should hold up the consideration of the entire Constitution until we have adult franchise. The difficulty will be in the first place to form the electorate under adult franchise; we have no such law existing at present. Adult franchise we have contemplated in this Draft Constitution and it will come into force when this Constitution has been passed. So if you want to have adult franchise and if you want to have another Constituent Assembly for the purpose of drafting the amendments, we shall have to pass another law and I do not know which House will have the right to pass that law which will constitute a Constituent Assembly. So I think it would be best to proceed with the draft which we have prepared after much labour and to which so much care and attention has been given by the Drafting Committee and by the Members of this House.

This is the programme which I propose to follow and if there is any other suggestion which any member wishes to make, I shall be glad to consider it. There is only one thing more which I might mention and that is this. I do not wish to curtail discussion. I want to give to members the fullest opportunity for considering every article and every aspect of the Constitutional question, because, after all, it is going to be our Constitution, but at the same time, I do not like that we should spend more time than is absolutely necessary over it by repeating arguments which have already been once advanced by one Member or another or by going over the same ground. For that reason, we may not reconsider many of the decisions which have already been taken. Members know that we had long discussions, and after long discussions we settled the principles of the Constitution and the Draft, the bulk of it, is based upon those decisions which were taken after long discussion by this House. I would not expect that the Members would lightly throw away those decisions and insist upon a reconsideration of those decisions. There may be cases where a reconsideration may be necessary. But ordinarily, we shall proceed upon the decisions which have already once been taken and it is only where no decisions have yet been taken that the House may have to take decisions for the first time. Now there are certain questions on which no decisions have been taken. There were certain committees appointed by the House. The reports of those Committees were not considered. But the Drafting Committee has taken care to place in the draft alternative proposals, one set of proposals representing their own views where they differ from those of those Committees and another set of proposals embodying the recommendations and the decisions of those Committees. So when we come to those particular provisions, the House may consider them on their merits, and after considering them on their merits may accept either the opinion of the Drafting Committee or of the Committee. The House will have the draft ready, so that it will not have to wait for preparing a draft on these questions. When we consider this whole matter from this point of view, I think, after all, the scope for discussion gets very much limited, because most of the amendments will be more or less of a drafting nature, because the decisions have already been taken, and so far as the drafting is concerned, the Drafting Committee has already considered many of these suggestions and amendments and it has accepted them. So, while there may be discussion of principle in regard

to some questions which have not been decided, there is not much to discuss so far as principles are concerned, because we have already discussed those principles and we have arrived at certain conclusions. Therefore, what I feel is this, that if we proceeded in a business-like way, it should be possible for us to complete discussion of the whole Constitution by the second anniversary of the day on which we started the work of this Constituent Assembly, that is, by the 9th of December next.

If we succeed in doing that, after that we might have a few days adjournment, when all the amendments which have been accepted by the House will be considered by the Drafting Committee and put in their proper places, when all the re-numbering and re-allocation of the Articles from one Chapter to another and so forth—all that becomes necessary—all that could be done within that interval of say ten or fifteen days. Then, we might meet a second time when we could finally accept the Constitution as it will have emerged. In this second discussion, under the Rules, we shall not go into the merits of any question; we shall have only to see that the amendments as they were accepted by the House have been incorporated in the final form in which the draft is placed before the House.

This is the proposal which I place before the House and I think this ought to meet with the approval of the members of this House.

Seth Govind Das (C.P. & Berar: General): *[Mr. President, I would like to know whether after adoption of the article relating to the national language, clauses which might have been passed by then in English would be placed before this House for adoption in Hindi.]

Mr. President: *[Yes, of course, all the clauses would be reconsidered in that language which may have been adopted as the national language. There would be no discussion at that time on the clauses as such. The only point for consideration would be whether the clause has been correctly translated or not. I, therefore, think that our discussions should be based on the English draft at present, for all those who have given thought to the draft and those who have prepared it, have done so in that language only. And when clause relating to the national language is finally adopted we would put up the translation of the Constitution in that language before you for adoption.]

Pandit Balkrishna Sharma (United Provinces: General): Sir, I wish to draw your attention to this very important question which my honourable friend Seth Govind Das has raised before the House.

Shri Mahavir Tyagi (United Provinces: General): *[Mr. President, I would like to submit that before we proceed to discuss fundamental questions, it appears desirable that you should decide what the procedure would be for tabling amendments. Shall the old procedure be followed or the one which you have stated now? It is necessary so that we may have some idea of the order in which debate would proceed, and the time we would be allowed for sending in amendments.]

Mr. President: *[Both will be decided simultaneously.]

Pandit Balkrishna Sharma: Sir, I fail to see where the point of order lies. As a matter of fact, I only wanted to draw your attention to one thing. Before you call upon the Honourable Dr. Ambedkar to move that the Draft Constitution be taken into consideration, I should like to draw your attention to the question which has been raised by my friend Seth Govind Das. After the motion which the Honourable Dr. Ambedkar is to move has been carried, we shall certainly consider the Constitution clause by clause. As you know, Sir, I am one of those who had given notice that the National language of India be Hindi and the script

*[ ] Translation of Hindustani speech.

[Pandit Balkrishna Sharma]

the Devnagari script. Naturally, the question will arise when we take into consideration one clause after the other of our Constitution, as to which language will it be in which the Constitution shall be deemed to have been passed. My suggestion, therefore, before you will be that when we consider the clauses of the Constitution, after finishing one Chapter of it, we must revert in Hindi and pass every clause as has been amended by this House and as has been translated in that language by a Sub-Committee of this House. I would therefore request you, Sir, that before you take up the consideration of the Constitution clause by clause, you may be pleased to appoint a Sub-Committee of this House which will keep itself in touch with the clauses and the amendments that the House wishes to make therein and as they are passed, and that Committee should get these clauses translated and these clauses, after finishing one Chapter, may again be brought before the House in Hindi and it could be deemed to have been passed in Hindi also. So that, after some time, when we have ultimately done away with the English language, the original must be considered to have been passed in Hindi, and it should be the ultimate authority, the authentic constitution. If we do not adopt any such course, I think we shall be greatly handicapped at the time when I think article 99 of the Constitution comes before us and we declare our language as Hindi and the script the Devnagari script. I think there is some difficulty before my South Indian friends. They can easily say that "this Constitution at present is in the English language which we all understand, you call upon us to pass every clause in Hindi, and we do not know the language." I think those of my South Indian friends who do not know Hindi to such an extent may rely on the better sense of their colleagues. Here, in this House, there are friends who do not know English and yet they rely upon your good sense and they do not raise the objection that they do not know the English language and therefore this Constitution is not good. Similarly, they may try to accommodate us in this matter.

Mr. President: I think it will cut short discussion on this point if I explain what I propose to do in regard to this matter. There is a motion of which notice has been given that a Committee should be appointed for the purpose of preparing a translation and that translation should be passed Article by Article by this House, and that should be treated as the original. There is something to that effect of which notice has been given. What I propose to do is this. Members are aware that we have got translations prepared: there is a translation in Hindi; there is a translation in Urdu; there is a translation in Hindustani; all these three translations of the Draft Constitution are ready and I believe members have received copies of these translations. As soon as the question is decided as to what will be our language, we shall set up a Committee which will take up that particular translation which is ready and see to it that it conforms literally to the original in English. Whatever our sentiments may dictate, we have to recognise the fact that most of those who have been concerned with the drafting of the constitution can express themselves better in English than they can in Hindi; it is not only a question of expressing in English or Hindi, but the ideas have also been taken from Constitutions of the West. So the expressions which have been used have, many of them, histories of their own and we have taken them bodily from the phraseology of Constitutions of the West in many places. Therefore it could not be helped because of the limitation of those who were charged with drafting that the draft had to be prepared in English. I do not think we have lost anything by that but when once a particular article is finally adopted in this House in the English language, we shall see to it that as correct and perfect a translation is produced as possible and in the language which will be accepted by the Constituent Assembly as the language for our national purposes. So I would ask the Members not to anti-

cipate the discussion which we shall have on the question of language. That will come a little later but I promise this that as soon as that question is settled, we shall have the translation revised or prepared in that particular language which is accepted and we shall put the translated Constitution also before the House for acceptance.

Seth Govind Das: *[Mr. President, you had made a specific commitment that when the constitution would be placed before us, its original would be in our national language. I had also put a question to you at that time and in your reply also you did say that the original draft of the constitution to be placed before us would be in our language. But the draft constitution placed before us by Dr. Ambedkar is in English. As the constitution now placed before us is in English I would like to know when the constitution originally drafted in our national language and about which you have given us an assurance will be brought before us].

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar: General): *[Mr. President, I would like to inquire whether after the adoption of the article relating to the national language, each clause would be taken up in the National Language for adoption just in the same manner as the clauses in the English Draft are taken up for final adoption after these have been duly amended.]

Mr. President: *[Every article will be taken up.]

Pandit Balkrishna Sharma: Sir, I only want to make this suggestion that before taking up the Constitution clause by clause will it not be better if you very graciously permit us to take up the question of national language and have a decision about it. Because if we first take up the question of the national language and decide it, then once for all the hatchet is buried (Cheers). You can have the discussions of 10 or 15 clauses in English. The Committee will be getting the translations ready the next day and the whole translation of that part will be before the House which will be called upon to take it into consideration and then it shall be deemed to have been passed by the House. Therefore I suggest you may be pleased to permit this House to take up the question of the national language first before taking up the Constitution clause by clause. The question of national language comes in somewhere in clause 99 of the Constitution which may take long. This question bristles with many difficulties and some of us feel it to be fundamentally embedded with our future. There are other members who do not attach importance to it. Therefore I would request you to take up this question first and give us an opportunity to decide it and afterwards take the Constitution in English clause by clause and then give us opportunity to take them in Hindi as well.

Mr. President: May I state that the very reason which he has adduced for taking up the question of language in the beginning has induced me to put it off to a later stage. The reason which he has given is that there are differences of opinion, some people holding very strongly one view and others holding the other view equally strongly. I suggest that it is much better to discuss at any rate the fundamentals of the Constitution in a calm atmosphere before our tempers have got frayed. I therefore suggest that we should go on with the Constitution and discuss each item and when we have done that much,—it will not in any way prejudice the question of language—the language question will be decided on its merits by the House and when that decision has been taken, every article will be passed ultimately in that language also. Therefore nothing is lost. Only, we do not lose temper to begin with.

* [ ] Translation of Hindustani speech.

Shri R. V. Dhulekar (United Provinces: General): *[Mr. President, Sir, the proposal that I want to place before you is this. On the first occasion when I delivered my speech in Hindi in this House, I had moved an amendment to the effect that the constitution should be framed in our national language and that the English version should be treated as its translation. Therefore I want to submit that when the discussion on the English version of the Constitution is over and it has been fully passed and when with your permission a decision has also been reached in regard to the national language, I shall place the proposal before you that the constitution in the national language should be considered as the original one. It will be insulting for us to adopt the translation of the English version. No nation has so far done so.

I admit that the Members would speak in English in this debate. I shall also speak in English and in fact want to do so but later I shall speak in Hindi. I wish to inform you that I want to place before you a motion when this discussion is over. It will be to the effect that the English version of the Constitution will be considered the translation of the constitution in the national language and the latter will be taken to be the original one. The English version will be styled as translation. I request that I may be told as to when I may table that motion before you.]

Mr. President: *[This Assembly is entitled to say whether the constitution will be passed in Hindi or Urdu and that version will be taken to be the original one. The other versions will be considered as its translations. You have the power to do so.]

Shri Suresh Chandra Majumdar (West Bengal: General): Sir, your orders came regarding the translations. Complete translations have been made in certain languages and I have no quarrel with that but in the process of Constitution-making it is imperative that the people of our country—whatever may be their spoken language—they should understand it. So in your scheme of translation if you will kindly include, in addition to Hindi and Urdu, other major languages of India, it would be very convenient for everyone to understand and thereby, whatever may be the Rashtrabhasha afterwards, it will not be said that the proceedings were carried on in a language or languages which were not intelligible to all parts of the country. This is my suggestion. I have no disrespect for Hindi nor have I any attachment to English but as the Constitution is a very important thing I think it should be made intelligible to all the people of the country. So my prayer is you might kindly include in your scheme of translation at least the major languages of India and I don't think it will be difficult for you to arrange that.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, you have made an announcement regarding the procedure you propose to follow in connection with the Bill before us, that will have a very important bearing on the discussions that will take place shortly. You have drawn our attention to two points.

The first point is that as the principles underlying this Bill were accepted by the Assembly a few months back, no amendment should be brought forward which would question any of these principles or would seek to make any alteration in them. Sir, this is a matter. . . . .

Mr. President: I qualified that by "ordinarily".

Pandit Hirday Nath Kunzru: It all depends on how the Chair will interpret this word. But I remember that when the discussions on the principles embodied in the Bill were going on, it was said several times that we should have a better opportunity for expressing our opinions later when the whole picture was before us. This is a matter that, I venture to think, Sir, deserves your serious attention. We might, a few months back, have accepted certain

* [ ] Translation of Hindustani speech.

conclusions, but if, either after studying the Act as a whole, or after further reflection, any of us comes to the conclusion that any of these principles should be modified or completely altered, his right to express his opinion should not be questioned.

Mr. President: I may say at once that I do not propose to rule out any discussion. It will be for the House to decide whether it will go back on any of its decisions. As Chairman, I do not propose to rule out any discussion or reconsideration.

Pandit Hirday Nath Kunzru: The House will certainly have the right to decide whether it will go back on any of its previous decisions. If it does not approve any change in the principles accepted by it some time ago, it will be open to it to throw out any suggestion for a change made by any Member. But what I have said, is due to the fact that I am under the impression that it was your intention to rule out certain amendments.

Mr. President: I am sorry if I left that impression.

Pandit Hirday Nath Kunzru: I am very glad to hear from you, Sir, that this is not your intention. It is therefore not necessary for me to discuss this aspect of your pronouncement any more.

I now come to the second point which you asked the House to bear in mind in giving notice of amendments in future. You said that you would allow amendments to be proposed till 5 o'clock on Sunday next, but that thereafter you would not admit any new amendment for discussion, unless it seemed to you to relate to a matter of importance. I think, Sir, we all appreciate the substance of what you have said. As far as possible, our discussion should be canalized in proper channels and should relate to such points only as ought to be considered by the House again. Your advice therefore in regard to the character of the amendments would naturally carry great weight with every Member of this House. But I submit, Sir, that no amendment, no matter when received, ought to be automatically ruled out on the ground that it was not received by 5 o'clock on Sunday afternoon. It is the duty of the Chair to regulate the discussion and I have no doubt that every Member of this House is anxious to help the Chair in its onerous task, particularly as the Chair is occupied by a person of your eminence. But we have under the rules certain definite rights of which every Member of the House ought to be jealous. We have under the rules the right to give notice of amendments at any stage we like, and provided they are received within the time allotted by the rules, our right to put forward new amendments cannot be questioned. It cannot be questioned even by you, Sir.

I therefore suggest that when you consider any amendment that is proposed, to be superfluous, or to relate to a very unimportant matter, you may well advise the Member concerned to save the time of the House by withdrawing it. But should he insist on expression his view, even on an unimportant matter, I hope that you, whose duty it is to maintain our rights and privileges unimpaired, will not take away by executive discretion his right to propose his amendment. Sir, this is a matter of great importance. It relates to a question of principle. I do not think that in practice any conflict will arise between the Chair and any member of this House but I am anxious that no right, not even the least, that the rules enable us to enjoy should be taken away from us or whittled down either directly or indirectly. I hope that my observations will receive the attention of the Chair and that my remarks will be taken in the spirit in which they have been made. We all mean to be respectful to you. We listen to whatever you say with great attention and with a desire to act up to your advice but we do earnestly request you not to make any attempt to trench even on the smallest of our privileges. We ask you to stand up for them should anybody attack them and I trust that the discussion will be carried on in such a way as to enable us to feel that you are the

[Pandit Hirday Nath Kunzru]

guardian of our dignity and privileges and will maintain unimpaired every right that the House enjoys at present under the rules.

Mr. President: I hope I have not given any cause so far in this Assembly to any Member to complain that I have acted in such a way as to take away any of his rights and I hope to continue the tradition in the future also.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I beg to draw your attention to the fact that I have already given notice of a motion to the effect:,

"That the consideration of the Draft Constitution of India be postponed till the election of a fresh and competent Constituent Assembly on the basis of Joint Electorates and the formation of political rather than communal parties in India."

I also beg to draw your attention to your ruling when I proposed an amendment to the same effect on the occasion of the presentation of the report on the principles of a Model provincial constitution, viz., that the consideration of the provincial constitution be postponed unless and until we have considered the Union Constitution. . . . . .

Mr. President: We shall take up your amendment in due course.

Maulana Hasrat Mohani: I want to place my motion first.

Mr. Hussain Imam (Bihar: Muslim): The motion that the Bill be considered has not been made and therefore the amendment cannot be moved at this stage.

Mr. President: That is what I am saying. We shall take it up in due course.

The Assembly then adjourned for Lunch till Three of the Clock.

The Assembly re-assembled after lunch at Three of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Shri Mahavir Tyagi: Mr. President, before we rose for lunch, the question put before you for your consideration was whether the procedure which you had announced regarding the discussions here held good or whether you will please accede to the request made by my friend Pandit Hirday Nath Kunzru. According to the rules we have the right to give two days' notice of amendments if they are to be considered valid. I need not quote the relevant rule. It is known to everybody. We followed it last time. When the draft of the Constitution was sent to us, I and many others here thought naturally that the same old procedure with regard to discussion will be followed. Now, many of my friends may not have sent in their amendments in full in the hope that we would discuss these matters here and then give notice of our amendments after a discussion between ourselves. The old arrangement of two days' notice enabled us to meet in groups or parties and discuss and send in amendments. If this practice is to be guillotined and we are not to be permitted to give notice of amendments as we proceed clause by clause, it will not be fair for those who have only just now joined the Assembly. There are many who have signed the Register today and got the papers of the Assembly a few hours ago. The draft Constitution is a huge volume which we want to read and consider. If you accede to the request of my friend Mr. Kunzru and permit the new-comers to study the draft Constitution as the discussion proceeds it will facilitate them to send their amendments in time and have their say. Otherwise, the new arrivals will not be accommodated at all.

Mr. President, we are the Constituent Assembly and are making the Constitution. An ordinary law which is considered by the Legislative Assembly and passed can be amended once every month or so. But the Constitution is not amended every now and then. We are making a Constitution for centuries to come and it cannot be amended easily, as easily as we can amend a legislative enactment. Therefore, full facilities should be given to the Members of this House to have their say.

Therefore, I repeat the request that you may please consider that the two days' time given in the rules is not taken away and allow amendments subject to their relevancy to the motion under consideration. Amendments may not be moved which have the effect of negativing the main motion except as permitted by the Chairman. Notice of amendments to a motion must be given one clear day before the motion is moved in the Assembly. This rule being there, I submit, unless we change the rules. . . . . .

Mr. President: The relevant rule is 38-0.

Shri Mahavir Tyagi: It says:

"If notice of a proposed amendment has not been given two clear days before the day on which the Constitution or the Bill, as the case may be, is to be considered, any member may object to the moving of the amendment, and such objection shall prevail, unless the President in his discretion allows the amendment to be moved."

Do you mean to interpret this rule 38-0 in such a way that the whole Constitution. . . . . .

Mr. President: I hope the Honourable Member will not drive me to give a decision on that point today. You had better leave it there. (*Laughter*).

Shri H. V. Kamath: Arising from the pronouncement made by you this morning, may I seek clarification on two points?

Shri Algu Rai Shastri (United Provinces: General): *[Mr. President, I find that Honourable Members stand up to intervene in the debate. I request that I may also be given a chance to speak.]

Shri H. V. Kamath: May I seek a little clarification of the announcement you made this morning? You were pleased to say that the Assembly would adjourn on 9th December for a few days. Do we adjourn on that day irrespective of whether we complete the consideration of the Constitution or not?

Mr. President: Nothing of the sort. I only suggested some sort of time table which I considered to be fair. It is for the House to decide whether they would go on up to 9th of December next year. (*Laughter*).

Shri H. V. Kamath: Are we going to have a recess from 9th December to a date to be specified later?

Mr. President: It all depends on the business on hand. I have suggested more than once that I do not want to curtail discussion. As we are considering the Constitution of the country, we shall not do anything in a hurry; but at the same time I do not want to waste time.

Shri H. V. Kamath: Are we going to adjourn on the 9th December, irrespective of whether we complete the consideration of the Constitution or not?

Mr. President: That we shall see.

Shri H. V. Kamath: You were pleased to remark in the morning as regards the non-participation of Hyderabad and Bhopal, that it is a matter entirely for the Government to consider. Mr. President, according to our Rules you have power to call upon the rulers of Hyderabad and other States to send representatives to the Constituent Assembly. But, you were pleased to say that it is a matter in the hands of Government. I do not know how the Government comes into this affair. You are fully authorised to call upon the rulers to send their representatives to the Assembly.

Mr. President: Sitting in this Assembly, I have no right to compel anybody to do anything. Those who have come in are entitled to participate in the deliberations of this Assembly and those who have not come, we cannot force them to come. It is for the Government to deal with them.

Shri Algu Rai Shastri: *[Mr. President, as far as I remember you had announced in the last session that the Constitution to be presented here would be in Hindi and that it might be translated into English. But the statement you have made today has been a source of disappointment in as much as we learn that we have to discuss the very Draft that has been prepared by the Drafting Committee in English. We have before us its Hindi version also. I do not understand why we should not take into consideration the Hindi version of the Draft when it is before us. We may take up for consideration the Hindi version of the Draft clause by clause and if any portion is found to be translated in rather difficult language Dr. Ambedkar who himself is a great scholar of the Sanskrit language, may explain such portion from the English Draft to those who are unable to follow the version in Hindi. It is necessary for every country to frame its constitution in its own language. We belong to a country that has its own language. We should therefore discuss it clause by clause in our own language. The Draft prepared in a foreign language should not be presented to this House for discussion.

Sir, perhaps you remember that at the commencement of the first session of the Constituent Assembly I made a request that the discussion in this House should be carried on in a language which is understood by the people of this country. We should not proceed in this House as if it were the British Parliament. The word 'Dominion' is entirely foreign in character. I remember a saying of the late Moulana Mohammad Ali. He used to say that the word 'Dominion' might be applicable to Africa, South Africa, New Zealand, Australia and Tasmania. These are the dominions where our alien rulers had founded

* [ ] Translation of Hindustani speech.

colonies and established cantonments. But India cannot be said to be a cantonment for the British. They went to the countries I have already named and established there their colonies and cantonments; they also carried their language with them and the people of those countries are English speaking. But this cannot be said in our case. We have our own language, our own civilization which has come down to us through hundreds of centuries; so also we have our own literature. Just as the English people can take pride in their literature, in Shakespeare and Milton, we too can be proud of the works of our Kalidas, Tulsidas, Jayasi and Soordas. It will be matter of deep shame for a country which has developed a language of its own, to frame its first free Constitution in a foreign language. Therefore, I would like to entreat you, to pray to you that the Hindi version of the Draft Constitution should be placed before this House as the original Draft of the Constitution. The clauses of the Hindi version should be discussed here and the English Draft should not be presented here for discussion. It should be treated only as a translation.

The English have quit India. Their cantonments are no longer here. Following your example and the example of your colleagues and other respected leaders who have immortalized their names in our history by eliminating the English rule from our land and whose names have become memorable, we should remove the word 'Dominion' from the Draft and I am sure it will be removed. It will, I think be agitated in detail in this House and many Members would express themselves on it. But this is a matter for future discussion. Just now the question before us is whether we have any language of our own and a culture of our own; whether we have a language of our songs, of our poems and for the expression of our thoughts and emotions. We should frame our Constitution in the same language in which we would express our feelings. The Preamble of the Draft says: "We, the people of India. . . . . give to ourselves this Constitution." Here the term "We the people of India" means not the few men who are sitting in this House but the dumb millions of India and on whose behalf we are functioning here. Therefore the Constitution that is being presented here must be in the language we understand. It is a matter of regret that many of our veteran leaders have begun to say that the problem of language has not yet been solved; that our language has not been reformed and that English has to stay. Such things are said sometimes. I do not want here to mention the names of those leaders. But since they say that we have no language of our own, I want to tell them that ours is a developed language, a rich language which is capable of expressing high thoughts and sentiments. It has a rich and a good vocabulary. We have inherited our language from our ancient sages, we have inherited it from Kautilya's Artha Shastra, from our ancient literature which has such gems as the Mahabharat and the Ramayana. We have developed our language taking words from these epics. Therefore it can not be said. . . .]

Mr. President: *[Excuse me, I do not understand what you are discussing. All the matters to which you are referring are those on which there is already considerable agreement.]

Shri Algu Rai Shastri: *[I am only submitting that the original draft of the Constitution which we are to discuss here should be in Hindi and not in English. Therefore we should have liberty to table amendments on the clauses of the Hindi version of the Draft treating it as the original one. I beg to propose this with the idea that it would indicate that we have our own language. We do not deem our land to be such a dominion within the British Empire as can express itself only in English.

I would like to say a few words more. Fortunately or unfortunately our brethren who live in those coastal regions where the English landed for the

* [ ] Translation of Hindustani speech.

*[Shri Algu Rai Shastri]

first time have acquired considerable proficiency in English. It is they who feel the greatest embarrassment when Hindi is mentioned as the national language. It had been the great good fortune of the people of Madras that their scholars gave to India a sublime message based on the Vedic literature and culture. Similarly it was their lot that the English. . . . . .]

Mr. President: *[I would like to point out to you that you are continuing to talk on a subject on which there is no dispute. All admit that we can and will frame our constitution in our language. There is no scope for any further discussion on this matter. Previously also the question has been discussed many times and I am sure that at the appropriate occasion it will be adopted.]

Shri Algu Rai Shastri: *[I am talking at present, of tabling amendments in Hindi.]

Mr. President: *[You can table amendments in Hindi if you so desire. But how can an amendment in Hindi fit in the clause that is in English. There will be difficulty for me but, however, if you wish to table any amendment in Hindi you can do so.]

Sardar Bhopinder Singh Man (East Punjab: Sikh): *[Mr. President, I want to invite your attention to the fact that while discussing the Report of the Minorities Board this House had decided on the last occasion that the consideration of the problem of Sikh rights should be held up as the conditions in the East Punjab were not normal. Today, we have got before us recommendations relating to all minorities but so far Sikhs are concerned, no decision has been taken as yet.]

Mr. President: *[When this question is taken up you will be free to say what you want to say about it.]

Sardar Bhopinder Singh Man: *[Sir, You have observed that amendments may be sent within two days but nothing has been decided regarding this question.]

Mr. President: *[You can send your amendments, after a decision has been taken in this matter.]

Mr. Hussain Imam: Mr. President, Sir, I do not wish to prolong the discussion on this subject. I simply wish to draw your attention to two important points. The rule as framed is all-comprehensive, the time of two days is given for giving amendments before the Constitution is taken up. Your discretion, Sir, is still left wide open, and I hope it will be used generously. I am saying this not that I am not convinced that it will be used generously but to assure my friends that, if there is anything material, they can rely on you that it will be given favourable consideration.

There is a second point on which I require your indulgence. Amendments to amendments can only come forward when the amendments are before the House. Therefore in that category you will have to relax your ruling and give us an opportunity to give amendments to amendments even after that time.

Mr. President: Certainly.

Mr. Hussain Imam: Thirdly, I wish to stress that this controversy about language may be happily solved if all those friends of ours who are interested in the Hindi version are formed into a Committee from the beginning to go forward with the work of translating or putting forward a Hindi version also. Amendments also may be sent in Hindi provided the office arranges to give us an English translation as well. So in this manner we will be able to achieve both the objectives. An amendment may be given in any language

* [ ] Translation of Hindustani speech.

which is approved by the Constituent Assembly provided a translation appears on the Order Paper simultaneously.

Fourthly, I should like to invite the attention of the House to the fact that the Constitution is being made for—I would not say for generations—as long as it serves our purpose. The United States of America has made amendments to its constitution and about twenty amendments have already been made. There the process is so difficult. As you will remember, that not only has to be got through the two Houses, but it must be approved by each unit of the U.S.A. Our position is not so bad. But there is one thing, Sir, on which I would require your indulgence, and that is the question of the boundaries of existing or new provinces. That matter, Sir, after the constitution will become so difficult that I am sure it will become well nigh impossible to do anything towards this end. If it is the will of the House that the present boundaries should be changed in any manner, it would be meet and proper that before we finalise the Constitution in the next session after the recess, we should have a picture of the provinces as they will be constituted in the immediate future and not leave it for further action in a remote future.

Mr. President: I think that the suggestion is somewhat premature. We are awaiting the report of the Commission which we have appointed and we shall consider it at that stage.

Mr. Hussain Imam: Before finalising, we may be able to move amendments to those recommendations as and when it comes up. I simply invite the attention of the House to the urgency of the matter and to the matter being given full consideration and finalization.

Shri R. V. Dhulekar: *[Sir, I submit that the period of two hours that will be given to us tomorrow for general discussion is too short. It is a different matter that hundreds of amendments will be received. When every member gets an opportunity of expressing his views, the amendments that are tabled after a discussion of a few days, are altered. The amendments are not referred to in the discussion. Therefore I request that if we are given three or four days' time for discussion and every Member is asked to observe the rule that he should not speak for more than fifteen minutes, every Member then will have the satisfaction that he has made his contribution in the House in the framing of the constitution. I submit that one day means only five hours time. If Dr. Ambedkar takes it up at four today and takes half the time tomorrow, there will hardly be left any time for us. Therefore I humbly request that we may be given an opportunity of speaking on this highly important constitution. The opportunity of framing the constitution does not come over and over again and everyone desires to speak out whatever he has to say for his country and nation. I want to submit also that whatever we speak here is not meant for this House only or for the present time only. Whatever is spoken here will be read even after hundred or two hundred or four hundred years and the people will come to know of the views of their ancestors on a particular point. They will interpret it accordingly. Therefore, Sir, I think we the Members in this House will be highly obliged if at least four days are granted to us. Everyone of us wants only fifteen minutes and I want to tell you on behalf of other Members also that if this opportunity is given to us, we shall sit together and come to a decision regarding the hundreds of amendments that may be brought forward and the Members of this House will help you in finalising the constitution as quickly as possible.]

Mr. President: *[We shall consider this later on. The time now being spent on the preliminary discussion reduces the time available for detailed discussion. Therefore, I would ask that you allow the real work to start.]

* [ ] Translation of Hindustani speech.

Pandit Thakur Dass Bhargava (East Punjab: General): *[Mr. President, at the very outset I would like to enquire whether the Honourable Dr. Ambedkar has given any notice of his intention to introduce the Draft Constitution as required by the Rule 38-L or not. I am asking for this information, because if no such notice has been given, I am afraid he can not move for consideration. According to the rules five days' notice is necessary.]

Mr. President: *[Yes! It has been included there. It has been included in the Agenda. It being a re-draft all the amendments will be taken up again.]

Pandit Thakur Dass Bhargava: *[Another point which I wanted to bring to your notice falls under Rule 38-M. The copy of the draft constitution, which is a re-draft, has been given to us just today at the time when you were adjourning the House for lunch, whereas it should have reached us much earlier. I think all the Members have not received a copy each so far. According to Rule 38-M. such copies should reach the Members at least three days before, more particularly for the reason that it contains various reports on new matters. Unless it has been thoroughly read and studied, how can amendments be sent?]

Mr. President: *[Which copy are you referring to? The Draft Constitution placed before you by Dr. Ambedkar of 21st February, the copies of which were distributed, will be moved by him and the amendments on it will be proposed as amendments and they will be moved on behalf of the Drafting Committee.]

Pandit Thakur Dass Bhargava: *[The third point for submission on which I respectfully want to lay more emphasis is regarding the interpretation of Rule 38-O. In my opinion the view that the words "two clear days before the 'day' on which the constitution is to be considered" in Rule 38-O is that all the amendments should reach the office by Sunday before 5 P.M., is not correct for the reason that the constitution shall not be taken up for consideration on the 9th November only; rather, its consideration will continue from day to day when the clauses will be discussed. There will be other dates further on after which it would be stated that the Constitution will be considered on those particular dates. That being the case, Members have the right to send in their amendments, two days before the date when the particular amendments shall be discussed.]

Mr. President: *[Let us not take a decision on this point at this stage.]

Pandit Thakur Dass Bhargava: *[I am aware that you want to give full opportunity to the Members for discussion and that their right of giving notice of amendments should remain intact. Every Member has confidence in the matter of the exercise of your discretion. But in my humble opinion, the question of discretion does not arise here, because according to my interpretation, every Member can send in amendments as a matter or right. This is also the intention of Rules 38-P and 38-Q. Your order that Members should send their amendments by 5 o'clock on Sunday goes in a way, *prima facie*, against the Members, which is not in order and should be reviewed. You may not decide it now, if you do not want to, though incidentally and in a way, the decision is there. In my humble opinion, if without reviewing the order, you extend the date, instead of 7th, to 10th and decide the question, when occasion arises, then nobody will have any grievance.]

Shri T. Channiah (Mysore State): On a point of order, Mr. President, Sir, most of the honourable Members who spoke previously know the English language very well. We are very sorry to bring it to your notice that most of the Members, especially Members coming from Madras, from Bengal, Bombay, Assam and many other places cannot understand Hindi or Hindustani. We have

* [ ] Translation of Hindustani speech.

to sit almost like dumb people. Mr. President, Sir, you are here to protect the interests of all the Members. I would, therefore, request you to see that all those members who know English and who are able to speak in English are made to speak in English.

MOTION *re* DRAFT CONSTITUTION

Mr. President: I think we shall now proceed with the discussion. I call upon the Honourable Dr. Ambedkar to move his motion.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I introduce the Draft Constitution as settled by the Drafting Committee and move that it be taken into consideration.

The Drafting Committee was appointed by a Resolution passed by the Constituent Assembly on August 29, 1947.

The Drafting Committee was in effect charged with the duty of preparing a Constitution in accordance with the decisions of the Constituent Assembly on the reports made by the various Committees appointed by it such as the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee and the Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc. The Constituent Assembly had also directed that in certain matters the provisions contained in the Government of India Act, 1935, should be followed. Except on points which are referred to in my letter of the 21st February 1948 in which I have referred to the departures made and alternatives suggested by the Drafting Committee, I hope the Drafting Committee will be found to have faithfully carried out the directions given to it.

The Draft Constitution as it has emerged from the Drafting Committee is a formidable document. It contains 315 Articles and 8 Schedules. It must be admitted that the Constitution of no country could be found to be so bulky as the Draft Constitution. It would be difficult for those who have not been through it to realize its salient and special features.

The Draft Constitution has been before the public for eight months. During this long time friends, critics and adversaries have had more than sufficient time to express their reactions to the provisions contained in it. I dare say that some of them are based on misunderstanding and inadequate understanding of the Articles. But there the criticisms are and they have to be answered.

For both these reasons it is necessary that on a motion for consideration I should draw your attention to the special features of the Constitution and also meet the criticism that has been levelled against it.

Before I proceed to do so I would like to place on the table of the House Reports of three Committees appointed by the Constituent Assembly *(1) Report of the Committee on Chief Commissioners' Provinces †(2) Report of the Expert Committee on Financial Relations between the Union and the States, and ‡(3) Report of the Advisory Committee on Tribal Areas, which came too late to be considered by that Assembly though copies of them have been circulated to Members of the Assembly. As these reports and the recommendations made therein have been considered by the Drafting Committee it is only proper that the House should formally be placed in possession of them.

Turning to the main question. A student of Constitutional Law if a copy of a Constitution is placed in his hands is sure to ask two questions. Firstly what is the form of Government that is envisaged in the Constitution; and

* Appendix A. † Appendix B. ‡ Appendix C (1 to 3).

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secondly what is the form of the Constitution? For these are the two crucial matters which every Constitution has to deal with. I will begin with the first of the two questions.

In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the form of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different.

Under the Presidential system of America, the President is the Chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do any thing without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so so long as his Ministers command a majority in Parliament.

The Presidential system of America is based upon the separation of the Executive and the Legislature. So that the President and his Secretaries cannot be members of the Congress. The Draft Constitution does not recognise this doctrine. The Ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament, namely, that they can sit in Parliament, take part in debates and vote in its proceedings. Both systems of Government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions—(1) It must be a stable executive and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on the other hand gives you more responsibility but less stability. The reason for this is obvious. The American Executive is a non-Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary Executive which means that it is dependent upon a majority in Parliament. Being a non-Parliamentary Executive, the Congress of the United States cannot dismiss the Executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of the members of Parliament. Looking at it from the point of view of responsibility, a non-Parliamentary Executive being independent of Parliament tends to be less responsible to the Legislature, while a Parliamentary Executive being more dependent upon a majority in Parliament become more responsible. The

Parliamentary system differs from a non-Parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the U.S.A., the assessment of the responsibility of the Executive is periodic. It takes place once in two years. It is done by the Electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the Executive is both daily and periodic. The daily assessment is done by members of Parliament, through questions, Resolutions, No-confidence motions, Adjournment motions and Debates on Addresses. Periodic assessment is done by the Electorate at the time of the election which may take place every five years or earlier. The Daily assessment of responsibility which is not available under the American system is it is felt far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability.

So far I have explained the form of Government under the Draft Constitution. I will now turn to the other question, namely, the form of the Constitution.

Two principal forms of the Constitution are known to history—one is called Unitary and the other Federal. The two essential characteristics of a Unitary Constitution are: (1) the supremacy of the Central Polity and (2) the absence of subsidiary Sovereign polities. Contrarywise, a Federal Constitution is marked: (1) by the existence of a Central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words. Federation means the establishment of a Dual Polity. The Draft Constitution is, Federal Constitution inasmuch as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. This dual polity resembles the American Constitution. The American polity is also a dual polity, one of it is known as the Federal Government and the other States which correspond respectively to the Union Government and the States Government of the Draft Constitution. Under the American Constitution the Federal Government is not a mere league of the States nor are the States administrative units or agencies of the Federal Government. In the same way the Indian Constitution proposed in the Draft Constitution is not a league of States nor are the States administrative units or agencies of the Union Government. Here, however, the similarities between the Indian and the American Constitution come to an end. The differences that distinguish them are more fundamental and glaring than the similarities between the two.

The points of difference between the American Federation and the Indian Federation are mainly two. In the U.S.A. this dual polity is followed by a dual citizenship. In the U.S.A. there is a citizenship of the U.S.A. But there is also a citizenship of the State. No doubt the rigours of this double citizenship are much assuaged by the fourteenth amendment to the Constitution of the United States which prohibits the States from taking away the rights, privileges and immunities of the citizen of the United States. At the same time, as pointed out by Mr. William Anderson, in certain political matters, including the right to vote and to hold public office, States may and do discriminate in favour of their own citizens. This favouritism goes even farther in many cases. Thus to obtain employment in the service of a State or local Government one is in most places required to be a local resident or citizen. Similarly in the licensing of persons for the practice of such public professions as law and medicine, residence or citizenship in the State is frequently required; and in business where public regulation must necessarily be

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strict, as in the sale of liquor, and of stocks and bonds; similar requirements have been upheld.

Each State has also certain rights in its own domain that it holds for the special advantage of its own citizens. Thus wild game and fish in a sense belong to the State. It is customary for the States to charge higher hunting and fishing license fees to non-residents than to its own citizens. The States also charge non-residents higher tuition in State Colleges and Universities, and permit only residents to be admitted to their hospitals and asylums except in emergencies.

In short, there are a number of rights that a State can grant to its own citizens or residents that it may and does legally deny to non-residents, or grant to non-residents only on more difficult terms than those imposed on residents. These advantages, given to the citizen in his own State, constitute the special rights of State citizenship. Taken all together, they amount to a considerable difference in rights between citizens and non-citizens of the State. The transient and the temporary sojourner is everywhere under some special handicaps.

The proposed Indian Constitution is a dual polity with a single citizenship. There is only one citizenship for the whole of India. It is Indian citizenship. There is no State citizenship. Every Indian has the same rights of citizenship, no matter in what State he resides.

The dual polity of the proposed Indian Constitution differs from the dual polity of the U.S.A. in another respect. In the U.S.A. the Constitutions of the Federal and the States Governments are loosely connected. In describing the relationship between the Federal and State Governments in the U.S.A., Bryce has said:

"The Central or national Government and the State Governments may be compared to a large building and a set of smaller buildings standing on the same ground, yet distinct from each other."

Distinct they are, but how distinct are the State Governments in the U.S.A. from the Federal Government? Some idea of this distinctness may be obtained from the following facts:

1. Subject to the maintenance of the republican form of Government, each State in America is free to make its own Constitution.

2. The people of a State retain for ever in their hands, altogether independent of the National Government, the power of altering their Constitution.

To put it again in the words of Bryce:

"A State (in America) exists as a commonwealth by virtue of its own Constitution, and all State Authorities, legislative, executive and judicial are the creatures of, and subject to the Constitution."

This is not true of the proposed Indian Constitution. No States (at any rate those in Part I) have a right to frame its own Constitution. The Constitution of the Union and of the States is a single frame from which neither can get out and within which they must work.

So far I have drawn attention to the differences between the American Federation and the proposed Indian Federation. But there are some other special features of the proposed Indian Federation which mark it off not only from the American Federation but from all other Federations. All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war

it is so designed as to make it work as though it was a unitary system. Once the President issues a Proclamation which he is authorised to do under the Provisions of Article 275, the whole scene can become transformed and the State becomes a unitary state. The Union under the Proclamation can claim if it wants (1) the power to legislate upon any subject even though it may be in the State list, (2) the power to give directions to the States as to how they should exercise their executive authority in matters which are within their charge, (3) the power to vest authority for any purpose in any officer, and (4) the power to suspend the financial provisions of the Constitution. Such a power of converting itself into a unitary State no federation possesses. This is one point of difference between the Federation proposed in the Draft Constitution, and all other Federations we know of.

This is not the only difference between the proposed Indian Federation and other federations. Federalism is described as a weak if not an effete form of Government. There are two weaknesses from which Federation is alleged to suffer. One is rigidity and the other is legalism. That these faults are inherent in Federalism, there can be no dispute. A Federal Constitution cannot but be a written Constitution and a written Constitution must necessarily be a rigid Constitution. A Federal Constitution means division of Sovereignty by no less a sanction than that of the law of the Constitution between the Federal Government and the States, with two necessary consequences (1) that any invasion by the Federal Government in the field assigned to the States and *vice versa* is a breach of the Constitution and (2) such breach is a justiciable matter to be determined by the Judiciary only. This being the nature of federalism, a federal Constitution cannot escape the charge of legalism. These faults of a Federal Constitution have been found in a pronounced form in the Constitution of the United States of America.

Countries which have adopted Federalism at a later date have attempted to reduce the disadvantages following from the rigidity and legalism which are inherent therein. The example of Australia may well be referred to in this matter. The Australian Constitution has adopted the following means to make its federation less rigid:

(1) By conferring upon the Parliament of the Commonwealth large powers of concurrent Legislation and few powers of exclusive Legislation.

(2) By making some of the Articles of the Constitution of a temporary duration to remain in force only "until Parliament otherwise provides."

It is obvious that under the Australian Constitution, the Australian Parliament can do many things, which are not within the competence of the American Congress and for doing which the American Government will have to resort to the Supreme Court and depend upon its ability, ingenuity and willingness to invent a doctrine to justify it the exercise of authority.

In assuaging the rigour of rigidity and legalism the Draft Constitution follows the Australian plan on a far more extensive scale than has been done in Australia. Like the Australian Constitution, it has a long list of subjects for concurrent powers of legislation. Under the Australian Constitution, concurrent subjects are 39. Under the Draft Constitution they are 37. Following the Australian Constitution there are as many as six Articles in the Draft Constitution, where the provisions are of a temporary duration and which could be replaced by Parliament at any time by provisions suitable for the occasion. The biggest advance made by the Draft Constitution over the Autralian Constitution is in

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the matter of exclusive powers of legislation vested in Parliament. While the exclusive authority of the Australian Parliament to legislate extends only to about 3 matters, the authority of the Indian Parliament as proposed in the Draft Constitution will extend to 91 matters. In this way the Draft Constitution has secured the greatest possible elasticity in its federalism which is supposed to be rigid by nature.

It is not enough to say that the Draft Constitution follows the Australian Constitution or follows it on a more extensive scale. What is to be noted is that it has added new ways of overcoming the rigidity and legalism inherent in federalism which are special to it and which are not to be found elsewhere.

First is the power given to Parliament to legislate on exclusively provincial subjects in normal times. I refer to Articles 226, 227 and 229. Under Article 226 Parliament can legislate when a subject becomes a matter of national concern as distinguished from purely Provincial concern, though the subject is in the State list, provided a resolution is passed by the Upper Chamber by 2/3rd majority in favour of such exercise of the power by the Centre. Article 227 gives the similar power to Parliament in a national emergency. Under Article 229 Parliament can exercise the same power if Provinces consent to such exercise. Though the last provision also exists in the Australian Constitution the first two are a special feature of the Draft Constitution.

The second means adopted to avoid rigidity and legalism is the provision for facility with which the Constitution could be amended. The provisions of the Constitution relating to the amendment of the Constitution divide the Articles of the Constitution into two groups. In the one group are placed Articles relating to (a) the distribution of legislative powers between the Centre and the States, (b) the representation of the States in Parliament, and (c) the powers of the Courts. All other Articles are placed in another group. Articles placed in the second group cover a very large part of the Constitution and can be amended by Parliament by a double majority, namely, a majority of not less than two thirds of the members of each House present and voting and by a majority of the total membership of each House. The amendment of these Articles does not require ratification by the States. It is only in those Articles which are placed in group one that an additional safeguard of ratification by the States is introduced.

One can therefore safely say that the Indian Federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation.

There is another special feature of the proposed Indian Federation which distinguishes it from other federations. A Federation being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities is bound to produce diversity in laws, in administration and in judicial protection. Upto a certain point this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of Government to local needs and local circumstances. But this very diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in many federal States. One has only to imagine twenty different laws—if we have twenty States in the Union—of marriage, of divorce, of inheritance of property, family relations, contracts, torts, crimes, weights and measures, of bills and cheques, banking and commerce, of procedures for obtaining justice and in the standards and methods of administration. Such a state of affairs not only weakens the State but becomes intolerant to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time

will have uniformity in all basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three

(1) a single judiciary,

(2) uniformity in fundamental laws, civil and criminal, and

(3) a common All-India Civil Service to man important posts.

A dual judiciary, a duality of legal codes and a duality of civil services, as I said, are the logical consequences of a dual polity which is inherent in a federation. In the U. S. A. the Federal Judiciary and the State Judiciary are separate and independent of each other. The Indian Federation though a Dual Polity has no Dual Judiciary at all. The High Courts and the Supreme Court form one single integrated Judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law or the criminal law. This is done to eliminate all diversity in all remedial procedure. Canada is the only country which furnishes a close parallel. The Australian system is only an approximation.

Care is taken to eliminate all diversity from laws which are at the basis of civic and corporate life. The great Codes of Civil & Criminal Laws, such as the Civil Procedure Code, Penal Code, the Criminal Procedure Code, the Evidence Act, Transfer of Property Act, Laws of Marriage Divorce, and Inheritance, are either placed in the Concurrent List so that the necessary uniformity can always be preserved without impairing the federal system.

The dual polity which is inherent in a federal system as I said is followed in all federations by a dual service. In all Federations there is a Federal Civil Service and a State Civil Service. The Indian Federation though a Dual Polity will have a Dual Service but with one exception. It is recognized that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in a large and complicated machinery of administration. But there can be no doubt that the standard of administration depends upon the calibre of the Civil Servants who are appointed to these strategic posts. Fortunately for us we have inherited from the past system of administration which is common to the whole of the country and we know what are these strategic posts. The Constitution provides that without depriving the States of their right to form their own Civil Services there shall be an All India Service recruited on an All-India basis with common qualifications, with uniform scale of pay and the members of which alone could be appointed to these strategic posts throughout the Union.

Such are the special features of the proposed Federation. I will now turn to what the critics have had to say about it.

It is said that there is nothing new in the Draft Constitution, that about half of it has been copied from the Government of India Act of 1935 and that the rest of it has been borrowed from the Constitutions of other countries. Very little of it can claim originality.

One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their Constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly what are the fundamentals of a Constitution are recognized all over the world. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based, I am sure, on an inadequate study,

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of the Constitution. I have shown what is new in the Draft Constitution and I am sure that those who have studied other Constitutions and who are prepared to consider the matter dispassionately will agree that the Drafting Committee in performing its duty has not been guilty of such blind and slavish imitation as it is represented to be.

As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration. I agree that administrative details should have no place in the Constitution. I wish very much that the Drafting Committee could see its way to avoid their inclusion in the Constitution. But this is to be said on the necessity which justifies their inclusion. Grote, the historian of Greece, has said that:

> "The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of a government at once free and peaceable; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendency for themselves."

By constitutional morality Grote meant "a paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own." (*Hear, hear.*)

While everybody recognizes the necessity of the diffusion of Constitutional morality for the peaceful working of a democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognized. One is that the form of administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution. It follows that it is only where people are saturated with Constitutional morality such as the one described by Grote the historian that one can take the risk of omitting from the Constitution details of administration and leaving it for the Legislature to prescribe them. The question is, can we presume such a diffusion of Constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.

In these circumstances it is wiser not to trust the Legislature to prescribe forms of administration. This is the justification for incorporating them in the Constitution.

Another criticism against the Draft Constitution is that no part of it represents the ancient polity of India. It is said that the new Consitution should have been drafted on the ancient Hindu model of a State and that instead of incorporating Western theories the new Constitution should have been raised and built upon village panchayats and District Panchayats. There are others

who have taken a more extreme view. They do not want any Central or Provincial Governments. They just want India to contain so many village Governments. The love of the intellectual Indians for the village community is of course infinite if not pathetic (*laughter*). It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations. The existence of these village communities each one forming a separate little State in itself has according to Metcalfe contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness and to the enjoyment of a great portion of the freedom and independence. No doubt the village communities have lasted where nothing else lasts. But those who take pride in the village communities do not care to consider what little part they have played in the affairs and the destiny of the country; and why? Their part in the destiny of the country has been well described by Metcalfe himself who says:

"Dynasty after dynasty tumbles down. Revolution succeeds to revolution. Hindoo, Pathan, Mogul, Maharatha, Sikh, English, are all masters in turn but the village communities remain the same. In times of trouble they arm and fortify themselves. A hostile army passes through the country. The village communities collect their little cattle within their walls, and let the enemy pass unprovoked."

Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them? That they have survived through all viscisitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low, on a selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn Provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit.

The Draft Constitution is also criticised because of the safeguards it provides for minorities. In this, the Drafting Committee has no responsibility. It follows the decisions of the Constituent Assembly. Speaking for myself, I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable majorities and minorities to merge someday into one. The solution proposed by the Constituent Assembly is to be welcomed because it is a solution which serves this twofold purpose. To diehards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. The history of Europe bears ample and appalling testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson "ask for any safeguard you like for the Protestant minority but let us have a United Ireland." Carson's reply was "Damn your safeguards, we don't want to be ruled by you." No minority in India has taken this stand. They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.

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The most criticized part of the Draft Constitution is that which relates to Fundamental Rights. It is said that Article 13 which defines fundamental rights is riddled with so many exceptions that the exceptions have eaten up the rights altogether. It is condemned as a kind of deception. In the opinion of the critics fundamental rights are not fundamental rights unless they are also absolute rights. The critics rely on the Constitution of the United States and to the Bill of Rights embodied in the first ten Amendments to that Constitution in support of their contention. It is said that the fundamental rights in the American Bill of Rights are real because they are not subjected to limitations or exceptions.

I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

In the second place, it is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. That the fundamental rights in America are not absolute rights is beyond dispute. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote one such judgment of the Supreme Court in justification of the limitation on the right of free speech contained in Article 13 of the Draft Constitution. In *Gitlow Vs. New York* in which the issue was the constitutionality of a New York "criminal anarchy" law which purported to punish utterances calculated to bring about violent change, the Supreme Court said:

> "It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."

It is therefore wrong to say that the fundamental rights in America are absolute, while those in the Draft Constitution are not.

It is argued that if any fundamental rights require qualification, it is for the Constitution itself to qualify them as is done in the Constitution of the United States and where it does not do so it should be left to be determined by the Judiciary upon a consideration of all the relevant considerations. All this, I am sorry to say, is a complete misrepresentation if not a misunderstanding of the American Constitution. The American Constitution does nothing of the kind. Except in one matter, namely, the right of assembly, the American Constitution does not itself impose any limitations upon the fundamental rights guaranteed to the American citizens. Nor is it correct to say that the American Constitution leaves it to the judiciary to impose limitations on fundamental rights. The right to impose limitations belongs to the Congress. The real position is different from what is assumed by the critics. In America, the fundamental rights as enacted by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these fundamental rights by limitations. When the question arose as to the constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitation, the Supreme Court invented the doctrine of police power and refuted the advocates of absolute

fundamental rights by the argument that every State has inherent in it police power which is not required to be conferred on it expressly by the Constitution. To use the language of the Supreme Court in the case I have already referred to, it said:

"That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime or disturb the public peace, is not open to question . . . . "

What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute.

In the Draft Constitution the Fundamental Rights are followed by what are called "Directive Principles". It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy which embodies such principles is that of the Irish Free State. These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words.

If it is said that the Directive Principles have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

The Directive Principles are like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is proposed to issue such instruments to the President and to the Governors. The texts of these Instruments of Instructions will be found in Schedule IV of the Constitution. What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.

The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realized better when the forces of right contrive to capture power.

That it has no binding force is no argument against their inclusion in the Constitution. There may be a difference of opinion as to the exact place they should be given in the Constitution. I agree that it is somewhat odd that provisions which do not carry positive obligations should be placed in the midst of provisions which do carry positive obligations. In my judgment their proper place is in Schedules III A & IV which contain Instrument of Instructions to

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the President and the Governors. For, as I have said, they are really Instruments of Instructions to the Executive and the Legislatures as to how they should exercise their powers. But that is only a matter of arrangement.

Some critics have said that the Centre is too strong. Others have said that it must be made stronger. The Draft Constitution has struck a balance. However much you may deny powers to the Centre, it is difficult to prevent the Centre from becoming strong. Conditions in modern world are such that centralization of powers is inevitable. One has only to consider the growth of the Federal Government in the U.S.A. which, notwithstanding the very limited powers given to it by the Constitution, has out-grown its former self and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong. On the other hand, we must resist the tendency to make it stronger. It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may fall by its own weight.

The Draft Constitution is criticized for having one sort of constitutional relations between the Centre and the Provinces and another sort of constitutional relations between the Centre and the Indian States. The Indian States are not bound to accept the whole list of subjects included in the Union List but only those which come under Defence, Foreign Affairs and Communications. They are not bound to accept subjects included in the Concurrent List. They are not bound to accept the State List contained in the Draft Constitution. They are free to create their own Constituent Assemblies and to frame their own constitutions. All this, of course, is very unfortunate and, I submit quite indefensible. This disparity may even prove dangerous to the efficiency of the State. So long as the disparity exists, the Centre's authority over all-India matters may lose its efficacy. For, power is no power if it cannot be exercised in all cases and in all places. In a situation such as may be created by war, such limitations on the exercise of vital powers in some areas may bring the whole life of the State in complete jeopardy. What is worse is that the Indian States under the Draft Constitution are permitted to maintain their own armies. I regard this as a most retrograde and harmful provision which may lead to the break-up of the unity of India and the overthrow of the Central Government. The Drafting Committee, if I am not misrepresenting its mind, was not at all happy over this matter. They wished very much that there was uniformity between the Provinces and the Indian States in their constitutional relationship with the Centre. Unfortunately, they could do nothing to improve matters. They were bound by the decisions of the Constituent Assembly, and the Constituent Assembly in its turn was bound by the agreement arrived at between the two negotiating Committees.

But we may take courage from what happened in Germany. The German Empire as founded by Bismark in 1870 was a composite State, consisting of 25 units. Of these 25 units, 22 were monarchical States and 3 were republican city States. This distinction, as we all know, disappeared in the course of time and Germany became one land with one people living under one Constitution. The process of the amalgamation of the Indian States is going to be much quicker than it has been in Germany. On the 15th August 1947 we had 600 Indian States in existence. Today by the integration of the Indian States with Indian Provinces or merger among themselves or by the Centre having taken them as Centrally Administered Areas there have remained some 20/30 States as viable States. This is a very rapid process and progress. I appeal to those States that remain to fall in line with the Indian Provinces and to become full units of the Indian Union on the same terms as the Indian Provinces. They

will thereby give the Indian Union the strength it needs. They will save themselves the bother of starting their own Constituent Assemblies and drafting their own separate Constitution and they will lose nothing that is of value to them. I feel hopeful that my appeal will not go in vain and that before the Constitution is passed, we will be able to wipe off the differences between the Provinces and the Indian States.

Some critics have taken objection to the description of India in Article 1 of the Draft Constitution as a Union of States. It is said that the correct phraseology should be a Federation of States. It is true that South Africa which is a unitary State is described as a Union. But Canada which is a Federation is also called a Union. Thus the description of India as a Union, though its constitution is Federal, does no violence to usage. But what is important is that the use of the word Union is deliberate. I do not know why the word 'Union' was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration the country is one integral whole, its people a single people living under a single *imperium* derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their Federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute.

The provisions relating to amendment of the Constitution have come in for a virulent attack at the hands of the critics of the Draft Constitution. It is said that the provisions contained in the Draft make amendment difficult. It is proposed that the Constitution should be amendable by a simple majority at least for some years. The argument is subtle and ingenious. It is said that this Constituent Assembly is not elected on adult suffrage while the future Parliament will be elected on adult suffrage and yet the former has been given the right to pass the Constitution by a simple majority while the latter has been denied the same right. It is paraded as one of the absurdities of the Draft Constitution. I must repudiate the charge because it is without foundation. To know how simple are the provisions of the Draft Constitution in respect of amending the Constitution one has only to study the provisions for amendment contained in the American and Australian Constitutions. Compared to them those contained in the Draft Constitution will be found to be the simplest. The Draft Constitution has eliminated the elaborate and difficult procedures such as a decision by a convention or a referendum. The Powers of amendment are left with the Legislatures Central and Provincial. It is only for amendments of specific matters—and they are only few—that the ratification of the State legislatures is required. All other Articles of the Constitution are left to be amended by Parliament. The only limitation is that it shall be done by a majority of not less than two-thirds of the members of each House present and voting and a majority of the total membership of each House. It is difficult to conceive a simpler method of amending the Constitution.

What is said to be the absurdity of the amending provisions is founded upon a misconception of the position of the Constituent Assembly and of the future Parliament elected under the Constitution. The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable constitution it has no axe to grind. In considering the Articles of the Constitution it has no eye on getting through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some

[The Honourable Dr. B. R. Ambedkar]

Article of the Constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none. That is the difference between the Constituent Assembly and the future Parliament. That explains why the Constituent Assembly though elected on limited franchise can be trusted to pass the Constitution by simple majority and why the Parliament though elected on adult suffrage cannot be trusted with the same power to amend it.

I believe I have dealt with all the adverse criticisms that have been levelled against the Draft Constitution as settled by the Drafting Committee. I don't think that I have left out any important comment or criticism that has been made during the last eight months during which the Constitution has been before the public. It is for the Constituent Assembly to decide whether they will accept the constitution as settled by the Drafting Committee or whether they shall alter it before passing it.

But this I would like to say. The Constitution has been discussed in some of the Provincial Assemblies of India. It was discussed in Bombay, C.P., West Bengal, Bihar, Madras and East Punjab. It is true that in some Provincial Assemblies serious objections were taken to the financial provisions of the constitution and in Madras to Article 226. But excepting this, in no Provincial Assembly was any serious objection taken to the Articles of the Constitution. No Constitution is perfect and the Drafting Committee itself is suggesting certain amendments to improve the Draft Constitution. But the debates in the Provincial Assemblies give me courage to say that the Constitution as settled by the Drafting Committee is good enough to make in this country a start with. I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile. Sir, I move.

Mr. President: Maulana Hasrat Mohani has given notice of an amendment. It was given at half-past Eleven this morning. I will allow him to move it, particularly because it will have the effect, if it is lost, of blocking another motion of which I have got notice. Maulana Saheb, will you kindly move your amendment?

Maulana Hasrat Mohani: *[Sir, the amendment, of which I have given notice, is to the effect that the present Constitution Assembly is not competent and there are three reasons why I do not regard it as competent. The first and the most important reason is. . . . . .]

Shri B. Das (Orissa: General): Mr. President, Sir, will Maulana Sahib please read out the amendment first?

Mr. President: I will read out the amendment. The amendment is this:

"That the Consideration of the Draft Constitution of India be postponed till the election of a fresh and competent Constituent Assembly on the basis of joint electorate and the formation of political rather than communal parties in India.".

That is the amendment.

Shri B. Das: May I rise on a point of order, Sir? My point of order, is that Maulana Sahib cannot move his negative amendment after.....

Mr. President: Won't you allow him to move it?

* [ ] Translation of Hindustani speech.

Shri B. Das: He has just spoken in Hindustani, the purport of which is that he has moved his amendment. This is contrary to the practice of this House. I think it is out of order and it should not be allowed.

Mr. President: I think I had better allow the Maulana Saheb to move the amendment. Then, you may take the point of order.

Maulana Hasrat Mohani: *[I was telling the reason why I do not regard this Constituent Assembly as a competent body. Firstly, because all over the world wherever a Constituent Assembly has been set up, it has been done as an outcome of revolution. Revolution does not necessarily mean an armed revolution. It only means that, when the prevailing system of Government has come to an end and another is intended to be set up in its place, a Constituent Assembly has been invariably called to frame and pass a constitution in the light of new conditions. If the previous form of Government were to continue then there was no need of a Constituent Assembly. Look at our new constitution drafted by Dr. Ambedkar. There is nothing new in it. He has mostly copied out either the Government of India Act of 1935 or, as admitted by himself, has drawn from the constitutions of other countries. A bit from here and a bit from there—it is a Pandora's Box. This is what has been produced by our friend Dr. Ambedkar! My biggest complaint on this account is that if for the purpose of drafting a constitution he had to copy out the constitutions of other countries, then why did he not embody the latest and the best constitution? How was it that he looked up to the constitutions of Australia, Canada, America, and England, but the constitution of the Soviet Union did not catch his eye? I have jotted down all the points he has made in his speech. This is not the time to reply them in detail, but this much I can say that he has retained all the bad points that he could lay his hands upon. He has observed that there should be no rigidity and legalism, but has he at any place said that a Unitary System of Government should be established? At one place he mentioned that he could not provide for the village Panchayats. If he had kept the Soviet Constitution in view, there would have been no difficulty in his way. I claim it and I challenge him on that point. For example, he has said that unless there is a unitary type of Government and a powerful Centre, nothing can be done. Such talk is beside the point. He does not know that it is so in the Soviet Constitution. What he has done is to allocate some subjects to Provinces, some to the Centre and some have been put in the concurrent list. In the Soviet Constitution every constituent state has been made a permanent republic; and to win its confidence every component unit has been given control over the defence, foreign relations and communications. What has been the result? He says that it would be detrimental, but there the Soviet Government have gained the confidence of their component states. The result has been that all parts of the Soviet Union—considered from the point of view of population they are all Muslim republics—have helped their utmost in the last war. People of Caucasia and of every war-ravaged region have stood wholeheartedly by the Soviet Union. Cossacks and others who rendered help all belonged to the Union. Thus his observation is unjustified. He is not taking the people into his confidence, and says that all should merge.]

Pandit Balkrishna Sharma: May I rise to a point of order? The revered Maulana Sahib is discussing the merits of the Constitution whereas the proposal that is put forward before us is that we must not consider this Constitution. The discussion of the merits of the Constitution cannot be brought before the House when we are to consider only the question of postponement of the discussion.

* [ ] Translation of Hindustani speech.

Mr. President: I thought it would save time if you left him alone.

Maulana Hasrat Mohani: *[I repeat what I have already said, that the reason why this House is not competent, is that you have consulted all the constitutions of the world; but you have not cared to see the latest and the best constitutions. The second point arises, what was the basis of the election of our Constituent Assembly? It was on communal basis. Muslims had elected Muslims and Hindus had voted for the Hindus, but the States were not represented. What was the position at the time of the first meeting of the Constituent Assembly? On your own admission there were three parties, namely, the Congress, the Muslim League and the States; but up to that time the States had not come in. No member of the Muslim League had taken any part. The result has been that the constitution that has been framed has been forged by one party alone. How can you enforce it on others? I mean to say that no reliance can be placed by us as the Constitution has been framed by one party alone. In the situation that has how arisen we also find the same, namely that there is only one party. It is like this: the Muslim League is finished, it has dissolved itself and all the States have merged themselves in the Indian Union and now only the Indian Government, namely one party, has remained in the field. That is why we have to form political parties so that your difficulties may come to an end.]

Shri Satyanarayan Sinha (Bihar: General): *[Did you find out any better solution?]

Maulana Hasrat Mohani: *[I am coming to that. Dr. Ambedkar has just said that the majority party should be considerate towards the Minority party. I say: we do not want them. You have provided in the constitution that 14 per cent of the seats should be reserved for the Muslims. You still consider yourself 86 per cent and Muslims to be 14 per cent. So long as you have this communalism, nothing can be done. Why do you say that Muslims are in a Minority. So long as you depict them in communal colours Muslims shall remain a Minority. When we come as members of a political party or as members of the Independent Communist party or as Socialists and then form a coalition party, then as a whole they will be arrayed against the rest.

You say that a long time has elapsed that many things have happened and that you have worked so hard. Mr. President, I would recall that when Pandit Jawahar Lal Nehru had presented the Draft Constitution, I had then raised an objection and he had advised me to leave alone a primary matter. I had thereupon pointed out to him that it would be absurd to leave aside a point which is to be settled first. I had also pointed out that by doing so he would not be taking any strong and firm stand but would be stuffing irrelevant matter in all directions. I had also enquired what he would do if questions were raised on these issues, if without taking any decision, he started framing the constitution. It is a futility; we should see what type of Constitution is required. We want to make a picture, but if that picture is not painted correctly, then it cannot be termed a picture. You will say that you have worked hard and that quite a long time has elapsed. My answer would be that there is no difficulty about it, neither was there any risk. I had protested at that time and I was glad that the Honourable President had stated that the point would be considered and it was on that understanding that we had discussed the resolution. You know that the same thing has happened in Pakistan as well. Mr. Jinnah had said that so long as the Constituent Assembly was not elected, the constitution could not be passed. This is the reason why I am telling you that so long as the Constituent Assembly is not elected on non-communal basis, you have no right to get a constitution passed by this Constituent Assembly. No matter receives any consideration from you, because you are inflated with the idea that you are in a majority and that whatever you like will be passed. Do not

* [ ] Translation of Hindustani speech.

imagine that no blame will come upon you. I am alone and I am saying all I can say. You may not agree. In reality you are doing all that the British Government had been doing. After sometime they used to give us pensions and used to ask us to stay at home. But why should we do so?

I would like to ask you what you are doing in Hyderabad. You say that a Constituent Assembly will be set up which would frame a constitution. You have accepted this principle for Hyderabad. Why don't you do it here? Obviously all this is being done on communal lines in which truth and justice have no place.

If he says that he cannot do that, he has no power to elect a new Constituent Assembly on the basis of joint electorate and that that would be done after the constitution has been framed, then I repeat what you have said, that 'legalism' and 'rigidity' should be cast aside. I ask him whether he can set up a Constituent Assembly in Hyderabad without the Nizam's firman. But here we set up an electorate for the Constituent Assembly as we felt the need for it; so it is incorrect to say that we can not do it. "Where there is a will, there is a way." If you are in earnest to be just to the country and if you want to treat every one equally, then I give you a warning that your endeavour to assimilate all into one whole, to build a paramount Indian power, will bring disaster. The latest example is that of Aurangazeb the Emperor. After conquering the whole of India he annexed the two Southern States of Bijapur and Golcanda with the intention of founding a unitary Moghul Empire. What was the result? They say Aurangazeb lost his kingdom because of his bigotry but I say it was lost because of his imperialistic ideas. If he had not done that, he would not have lost a kingdom. Do not think it is easy to form a single unitary Government by coercing each and all into your fold. That can not last. You should hold fresh elections on non-communal basis, on the basis of joint electorates, and then whatever constitution you frame will be acceptable to us. We regard the constitution framed by you worthy of being consigned to the waste paper basket.]*

Shri B. Das: I wish to point out that under Rule 31 sub-clause (2) the motion for adjournment on the motion moved by the Honourable Dr. B. R. Ambedkar for the consideration of the Draft Constitution of India should not have been allowed by the Chair.

Mr. President: I have taken this under Rule 25, Clause (5), sub-clause (b) as a motion for adjournment of consideration of a motion which is under discussion.

Shri B. Das: But he is wanting a fresh election to take place first in the country. That is a negation of the whole idea.

Mr. President: I have liberally construed the rule for the Honourable Member and I have taken it, as I have said, under Rule 25, Clause (5), sub-clause (b).

Begum Aizaz Rasul (United Provinces: Muslim): Sir, before we adjourn for the day, may I know how many days the Chair proposes to allow for the general discussion on Dr. Ambedkar's motion?

Mr. President: As at present advised, it is hoped to conclude the discussion to-morrow. I will limit the time of each speaker and if I find that there is a considerable opinion in favour of further discussion, more time may be given.

The Constituent Assembly then adjourned till Ten of the Clock on Friday the 5th November 1948.

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*[ ] Translation of Hindustani Speech.

APPENDIX 'A'

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

New Delhi, the 21st October 1947.

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA,

NEW DELHI.

DEAR SIR,

We, the members of the Committee appointed by you in accordance with the motion adopted by the Constituent Assembly on the 30th July, 1947, for the purpose of recommending constitutional changes in the five Centrally administered areas, *viz.*, Panth Piploda, Andaman and Nicobar Islands, Coorg, Ajmer-Merwara and Delhi, submit this our report and the annexure thereto. We have adopted broadly the principles of responsible government as the basis of the constitution for the three last mentioned provinces. We have, however, made some modifications in the provisions adopted by the Assembly in respect of the Major Provinces. Before formulating our proposals we fully considered the position of these provinces with respect to their geography, financial condition and the working of the existing system of government in these areas.

2. Panth Piploda is a small tract of territory consisting of only 10½ villages situated in Malwa in the Central India Agency. In view of its small size and isolated position we have recommended that it should form part of the province of Ajmer-Merwara. This step was also suggested by some influential citizens of Panth Piploda. As regards the group of islands in the Bay of Bengal known as the Andaman and Nicobar Islands which have ceased to be penal settlements, we recommend that they should continue to be administered by the Government of India as at present with such adjustments in their administrative machinery as may be deemed necessary.

3. Before recommending any constitutional changes for the three Chief Commissioners' Provinces of Coorg, Ajmer-Merwara and Delhi which we propose to designate as Lieutenant Governors' Provinces, we took into account the following considerations:—

(a) that the Centre must have a special responsibility for the good government and the financial solvency of these provinces;

(b) that on account of the smallness of these areas and the scantiness of their resources, the need for Central assistance will continue for pulling up the standard of their administration to the level in the major provinces.

Among the important decisions taken by us are:—

(1) Each of these three provinces should henceforth function under a Lieutenant Governor to be appointed by the President of the Indian Federation.

(2) Each of these provinces should normally be administered by a Council of Ministers responsible to the legislature as in other provinces, but any difference on an important matter arising between the Lieutenant Governor and the Ministry should be referred to the President of the Federation for final decision.

(3) Each of these provinces should have an elected legislature which should function like other provincial legislatures except that—

(a) the Federal Legislature will in the case of these provinces, have concurrent power of legislation even in respect of the subjects included in the Provincial Legislative List;

(b) all laws passed by the provincial legislature shall require the assent of the President of the Federation;

(c) the budget of the province after being voted by the provincial legislature shall require the approval of the President of the Federation before it becomes operative.

4. We are fully alive to the circumstances which led to the formation of the Delhi province in 1912. We also recognize the special importance of Delhi as the Capital of the Federation. We are, however, of the opinion that the people of the province which contains the Metropolis of India should not be deprived of the right of self-government enjoyed by the rest of their countrymen living in the smallest of villages. We have, accordingy, placed the Delhi Province on a par with Ajmer-Merwara and Coorg and have recommended responsible Government subject to the limitations already indicated. Our detailed recommendations are given in the annexure.

Your sincerely,

B. PATTABHI SITARAMAYYA
(*Chairman*)

N. GOPALASWAMY AYYANGAR

DESHBANDU GUPTA

K. SANTHANAM

C. M. POONACHA

MUKAT BEHARI LAL BHARGAVA

Members of the Committee.

[ANNEXURE 1]

LIEUTENANT GOVERNORS' PROVINCES

Delhi, Ajmer-Merwara including Panth Piploda, Coorg and such other provinces as may be so designated shall be Lieutenant Governors' Provinces.

The Provincial Executive

2. In each Province there shall be a Lieutenant Governor who shall be appointed by the President of the Federation.

3. The provisions of the Constitution Act relating to the term of office, qualification for appointment, eligibility for re-appointment, conditions of office, declaration before entering office by the Governor shall as far as possible be applicable in the case of the Lieutenant Governor. He may be removed from office by the President on grounds upon which a Governor may be impeached.

4. (i) The executive authority of the Province shall be vested in the Lieutenant Governor and may be exercised by him either directly or through persons acting under his authority.

(ii) The power to suspend, remit or to commute the sentence of any person convicted of any offence shall be vested in the Lieutenant Governor as in the case of major provinces.

(iii) Nothing in this section shall prevent the President of the Federation or the Provincial Legislature from delegating functions to subordinate authorities.

Administration of Provincial Affairs

5. (i) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. The number of ministers shall not exceed three except with the approval of the President of the Federation.

(ii) In case of difference of opinion between the Lieutenant Governor and his ministers on any issue which he considers important, he may refer the matter to the President of the Federation, whose decision shall be final and binding upon the Province.

6. The provisions of the Constitution Act relating to the appointment, dismissal and with respect to the determination of the salaries of the ministers in the Governors' Provinces shall, as far as possible, be applicable in the case of Lieutenant Governors' Provinces.

Legislative

7. There shall for each of the Lieutenant Governor's Province be a Legislature, consisting of a single Chamber to be known as the Legislative Assembly. It shall be composed of members chosen by election.

8. The term of office of the elected members of the Assembly, the basis of franchise and other general provisions shall be on the lines as provided in the Constitution Act for Governors' Provinces except that the representation of the different territorial constituencies in the Assembly shall be on a scale of not more than one representative for every 5,000 persons subject to a maximum of 33 for Coorg, 15,000 subject to a maximum of 40 in the case of Ajmer-Merwara including Panth Piploda and 20,000 subject to a maximum of 50 in the case of Delhi.

9. The Provincial Assembly shall not have the power to make laws for federal subjects; and the subjects included in both the provincial and concurrent lists in the new constitution, will be treated as concurrent in respect of these minor provinces. Laws made by the federal legislature for these provinces in respect of any of these subjects shall prevail over laws passed by the Provincial Assembly in so far as the latter are inconsistent with the Federal laws.

10. Laws passed by the Provincial Assembly shall require the assent of the President of the Federation.

11. The provisions of the Constitution Act relating to prorogation and dissolution of the legislature, the right of the Governor to address and send messages, election of members as Officers of the legislature and fixation of their salaries in Governor's Provinces shall apply *mutatis mutandis* in the case of Lieutenant Governors' Provinces.

12. The Provisions of the Constitution Act relating to the making of declaration by members, vacation of seats, disqualifications of members, their privileges and immunities, salaries and allowances, in the Provincial Legislatures shall be as far as possible be applicable in the Lieutenant Governors' Provinces.

13. The provisions of the Constitution Act relating to language to be used in the Provincial Legislature shall as far as possible be applicable in the case of these Provinces.

Administrative Breakdown

14. If at any time the President of the Federation is satisfied that the government of the Province cannot be carried on in accordance with these provisions, he should have power to supersede these arrangements, take the administration into his own hands and make such other provision for conducting it as he may consider necessary. The exercise of this power will be subject to the usual provisions relating to report to and control by the Federal Legislature in the case of emergencies in a Governor's Province.

Judiciary

15. (i) In the case of Coorg, the powers of a High Court shall be exercised by the Madras High Court.

(ii) For Delhi and Ajmer-Merwara there shall be a High Court established in Delhi having original as well as appellate jurisdiction over both the provinces. The constitution of this High Court, the appointment of judges and their salaries, its jurisdiction and administrative functions shall be governed by the provisions of the Constitution Act applicable to the High Courts.

Provincial Services

16. (i) For higher appointments provision shall be made in the recruitment of All India Administrative Services for meeting the requirements of these three provinces.

(ii) Provision shall be made for transfers *inter se* of service personnel recruited in the aboye manner in these three provinces.

Representation in the Federal Legislature

17. Notwithstanding anything to the contrary in the Union Constitution regarding the basis of representation for the Houses of Federal Legislature, each of these three Minor Provinces should be treated as a unit of the Federation for purposes of representation in the two Houses of the Federal Legislature.

CHIEF COMMISSIONERS' PROVINCES

18. (i) Andaman and Nicobar Islands and such other areas as may be so designated shall be the Chief Commissioners' Provinces.

(ii) The Andaman and Nicobar Islands shall continue to be administered as at present with such adjustments in the administrative machinery as may be deemed necessary.

Additional Note by Shri Mukat Behari Lal Bhargava and Shri C. M. Poonacha, to the Chief Commissioners' Provinces Constitution Committee Report.

We, the members representing Ajmer-Merwara and Coorg having signed the report find it necessary to append this additional note regarding the future of these two provinces.

The special problems arising out of the smallness of area, geographical position, scantiness of resources attended with, what may be called administrative difficulties of many a complex nature may, at no distant future, necessitate the joining of each of these areas with a contiguous unit. Therefore we feel that a specific provision should be made in this chapter of the constitution to make possible such a union after ascertaining the wishes of the people of these areas. No doubt, our attention was drawn to clause 3 of the Union Constitution Committee Report, which is yet to be adopted by the Constituent Assembly, wherein certain provisions relating to the creation of a province, altering the boundaries of a province, etc., are embodied. But after careful examination we feel that the proposed clause 3 of the Union Constitution Committee Report is of a very restrictive nature and does not in specific terms contemplate the inclusion of an Indian Province of areas with a State or Group of States. Taking into account the situation of Ajmer-Merwara which is surrounded on all sides by Rajputana States such a clause would perpetually leave Ajmer-Merwara in isolation even though the people of Ajmer-Merwara may at any time decide against it. Accordingly we press upon the Constituent Assembly the urgency of incorporating a suitable provision in this chapter of the Constitution so as to make it possible for each of these areas to join a contiguous unit.

APPENDIX B

No. CA/103/Cons/47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE

New Delhi, the 5th December 1947.

To

THE SECRETARY,
CONSTITUENT ASSEMBLY OF INDIA,
COUNCIL HOUSE, NEW DELHI.

Expert Committee on Financial Provisions

SIR,

I have the honour to forward herewith the Report of the Expert Committee on Financial Provisions of the Union Constitution for submission to the Hon'ble the President.

I have the honour to be,
Sir,
Your most obedient servant,

M. V. RANGACHARI,
Member-Secretary.

REPORT

Terms of Reference

[ANNEXURE 1]

We were appointed by the President of the Constituent Assembly to examine and report on the Financial Provisions of the Constitution Act with the following terms of reference:—

I. To examine, with the aid of the memoranda on the distribution of revenue between the Centre and the Provinces sent by the Government of India and the Provinces, the existing provisions relating to finance and borrowing powers in the Government of India Act, 1935, and their working during the last ten years and to make recommendations as to the entries in the lists and sections to be embodied in the new Constitution.

The following points shall, in particular, be kept in view in making the recommendations:—

(a) How are taxes to be allocated between the Centre and the Units as regards legislation, levy and collection?

(b) Which are the Federal taxes—

(i) whose net proceeds are to be retained entirely by the Centre;

(ii) whose net proceeds are to be entirely made over to Units;

(iii) whose net proceeds are to be shared between the Centre and the Units?

(c) On what principles the taxes mentioned in (b) (iii) are to be shared between the Centre and the Units?

(d) What is to be the machinery for determining the shares: *e.g.*, whether a Financial Commission should be appointed immediately after the enactment of the Constitution to report on the principles of sharing and their application to be brought into effect when the Constitution comes into force; and whether the same or a similar Commission should review these principles and their concrete application periodically, say, once in five years?

II. What should be the principles on which Federal grants should be made to the Units in future? What should be the machinery for the determination of such grants: could the same Financial Commission as is referred to in I(d) above act as the machinery for this purpose also, or should it be a different one?

III. How could the Indian States be fitted into this general system as far as possible on the same terms as Provinces? Should a time lag be provided for their being so fitted in?

IV. On the assumption of financial responsibility for Defence, Foreign Affairs and Communications on behalf of the Indian States under arrangements for accession to the Federation, what special financial arrangements, if any, are necessary between the acceding States and the Federation?

V. Should the existing rights of the Indian States as to Federal taxes now levied by them be acquired on payment of compensation?

VI. How far is it feasible, on the centralization of all customs levied at the Federal frontiers, to permit Indian States affected by such centralization to retain such portion of the customs so levied at their frontiers as might be attri-

buted to consumption in the States, etc.? [A review of the existing agreements between the Centre and certain important Indian States as regards maritime customs, excises etc. may be of value in this connection.]

VII. Some Provinces have claimed a larger percentage of the income-tax to be made over to them than under the existing system. Does this claim merit consideration; if so, to what extent?

VIII. A suggestion has been made that the Centre should be allocated only the excises on specified commodities, the rest of the field of excise being left to the Provinces to tap according to their needs. Would this be possible without any material detriment to Federal revenue?

IX. On the basis that the residuary powers are vested in the Centre in the new Constitution so far as the Provinces are concerned, and in the States so far as the States are concerned, is it necessary that any additional specific taxes should be entered in the Provincial List, and if so, what?

X. Is it necessary to make any modifications in the existing provisions as regards procedure in financial matters contained in Sections 33 to 37 and 78 to 83 of the Government of India Act, 1935?

XI. A large number of Indian States at present derive substantial revenues from land customs levied at the frontiers between their limits and those of neighbouring States or Provinces. One of the fundamental rights already adopted by the Constituent Assembly is to remove all internal barriers in regard to trade between Unit and Unit. Could these land customs be done away with either immediately or over a period of years, and if so, should any prejudice caused thereby to the finances of particular States be compensated and in what manner?

[The Committee should kindly indicate clearly which of its recommendations should go into the body of the Constitution and which should be provided for by Federal law.]

Prefatory Remarks

2. We began our work on the 17th November and have been sitting continuously. We have received memoranda from the various Provincial Governments setting out their claims for larger resources as well as their points of view in connection therewith. We have also received a memorandum from the Ministry of Finance of the Central Government giving a picture of the financial position of the Centre in the near future. The Secretariat of the Constituent Assembly has collected for us information on various matters relating to the States, and also helpful information regarding other Federations. It has also prepared a draft of the sections which come within our terms of reference; and this has considerably helped us in our work. We are indebted for all these memoranda, information and drafts. We are also indebted to some of the Provincial authorities who appeared before us in person and discussed with us informally the questions arising out of the memoranda presented by their Governments. We availed ourselves also of the specialised knowledge and experience of not only some of the officials of the Central Secretariat, but of some members of the Constituent Assembly and others who have unique knowledge of some of the problems under our consideration. All our discussions, however, were free and informal; and we did not, therefore, record any evidence, apart from the memoranda placed before us.

3. In particular, the other two of us would like to place on record our grateful appreciation of the assistance we have received from our colleague and Secretary Mr. Rangachari, who amidst his exacting, multifarious duties, including the

preparation of the interim budget, not only found time regularly to attend our meetings, but also placed his wide knowledge and experience at our disposal, and arranged to secure at short notice most of the available information required by us. We should also like to thank Mr. B. Das Gupta of the West Bengal Government Secretariat for the intelligent and extremely well informed assistance he gave us. We are also indebted to Mr. Mukerjee, Joint Secretary of the Constituent Assembly, for his help throughout our sittings and in particular for putting our recommendations in the shape of draft amendments to the Constitution.

4. Our terms of reference may be divided broadly into the four following groups:

(1) Relations between the Centre and the Units, and between the Units *inter se*;

(2) Financial procedure, *i.e.* relating to the budget, expenditure and money Bills;

(3) Borrowing powers of Units; and

(4) Relations of the Union with the States.

We have accordingly, for convenience, regrouped our terms of reference as follows:

(1) I, VII, VIII, IX, II

(2) X

(3) I

(4) III, IV, V, VI, XI

and discussed them, as far as possible, in the above order.

Brief History of Financial Relations

5. Before dealing with the working of the financial arrangements in the Government of India Act, 1935, it is necessary to give a brief account of the earlier arrangements so that we can have a correct picture of the problems before us.

6. The period before the passing of the Government of India Act, 1935, falls into two well-defined parts, namely, the period ending with the 31st March, 1921, i.e., before the operation of the Government of India Act, 1919, and the period covered by that Act.

7. The process of financial development in this country has been one of evolution from a unitary to a quasi-federal type. The Government of India started as a completely unitary Government in entire control of the revenues of the country with the Provincial Governments depending on the Central Government for all their requirements. In the earlier years, Provincial Governments were given fixed grants for meeting the expenditure on specific services, and the first step in making specific sources available to them was taken when the Provincial Governments were given the whole or part of certain heads of revenue like Forest, Excise, Licence Fees (later to develop into Income-tax), Stamps, Registration, Provincial Rates, Law and Justice, Public Works, Education, etc. The funds released by this allocation were not adequate for the requirements of the Provinces and had to be supplemented, mainly by sharing with them in varying proportions the main source of Central revenue, namely, Land Revenue, and partly by making to them additional cash assignments. In 1904, the settlements with the Provinces were made quasi-permanent, thereby making the Provinces less dependent on the fluctuating grants from the Centre. This method of financing the Provinces was examined more than once and retained as the best suited to the then circumstances.

8. The Government of India Act, 1919, which, among other things, aimed at giving a reasonable measure of autonomy to the Provinces as the first step in the process of self-government, made the first clear-cut allocation of resources between the Centre and the Provinces without having any divided heads between them. Under this Act, certain specific heads were given wholly to the Provinces and the remaining sources were retained by the Centre. Thus among the principal heads of revenue, Land Revenue, Excise and Stamps were given to the Provinces, while the Centre retained Customs, Income-tax, Salt and Opium. Of the three great Commercial departments of Government, Railways and Posts and Telegraphs were retained by the Centre, while irrigation was handed over to the Provinces.

9. This allocation of resources between the Centre and the Units, particularly the assignment of the whole of Land Revenue to the Provinces, left the Central budget in a substantial deficit; and in the earlier years of this scheme, the Centre had to depend on the Provinces for contributions for balancing its budget. These contributions were fixed by what is commonly known as the Meston Award, and were designed to produce for the Centre an estimated shortfall of Rs. 9·8 crores resulting from the rearrangement of resources between the Centre and the Provinces. The contributions ranged from Rs. 348 lakhs from Madras to Rs. 15 lakhs from Assam, while one Province, namely, Bihar and Orissa, had to make no contribution at all. It is unnecessary for the present purpose to describe in detail the method by which these contributions were fixed. It is enough to mention that they became a source of constant friction between the Centre and the Provinces; and when substantial Provincial deficits occurred, an unceasing clamour developed for their withdrawal. Between 1925 and 1928 these contributions were partially remitted and they were completely extinguished in 1929.

10. The experience of the years under the 1919 Act clearly showed that the sources of revenue allocated to the Provinces were inelastic, and were insufficient to meet the increasing requirements of the Provinces for their expanding needs for nation building services such as Education, Medical Relief, Public Health etc., which fell almost wholly in the Provincial field. It was clear that some additional revenue heads had to be released to the Provinces; and while the Government of India Act, 1935 did not make any radical change in the allocation of heads between the Centre and the Units, it revived in a somewhat modified form the earlier principle of dividing the proceeds of certain Central heads, the two heads concerned being Customs and Taxes on Income. The Act also provided for the grant of fixed subventions to some of the smaller Provinces, and gave the Centre power to raise Excise and Export duties for distribution among the Provinces and federating States. After an enquiry into the relative needs of the Centre and the Provinces by Sir Otto Niemeyer, the Provincial shares in the divided heads of Central revenue and the subventions to some of the Provinces were fixed by an Order-in-Council, which, subject to a modification during the war, continued till 15th August, 1947.

Present Constitutional Position

11. Under the Government of India Act, 1935, which is the starting point of our enquiry, the taxing jurisdictions of the Central and Provincial Legislatures are entirely separate. But, while the Provinces retain the whole of the net proceeds of all taxes levied by them, the Central Government has to give away either in part or in whole the net proceeds of some of the taxes levied by it.

12. The taxes, the net proceeds of which are to be given away wholly to the Provinces, if levied, are—

(1) Federal Estate and Succession duties,

(2) Federal Stamp duties,

(3) Terminal Taxes on goods and passengers carried by Railway or Air,

(4) Taxes on Railway fares and freights.

The Centre can levy a surcharge on those taxes entirely for its own purpose. None of these taxes has in fact been levied, except that the Federal Stamp duties continue to be levied under the old laws, the duties however being collected and retained by the Provinces.

13. The Federal Taxes, the net proceeds of which are to be shared with the Provinces, fall into two groups:—

(1) taxes the sharing of the net proceeds of which has been made obligatory by the Constitution viz., income-tax and jute export duty.

(2) taxes, the sharing of the net proceeds of which has been left to be determined by the Federal Legislature *viz.*, Central Excises including duty on salt, and export duties except on jute and jute products. The Central Legislature has levied certain taxes under these heads, but has not provided for giving any share to the Provinces.

14. Besides providing for giving away the net proceeds of taxes in whole or in part to the Provinces, the Constitution also provides for fixed grants-in-aid to some Provinces.

15. There is also a general provision for giving grants to Provinces at the discretion of the Central Government either for general or specific purposes.

16. Two tables showing the Constitutional position in respect of the revenues of the Federal and Provincial Governments respectively under the Government of India Act, 1935, will be found in Appendix I. We are indebted to Mr. Ayyangar's commentary on the Government of India Act, 1935, for these tables.

Review of Finances of Provinces and the Centre

17. Two tables giving the financial position of the Provinces and the Centre during the year 1937-38 to 1946-47 are set out in Appendix II. In considering the working of the existing arrangements during the last decade, the most important point to note is that war broke out soon after the Government of India Act, 1935, came into operation.

18. During the war, all Provinces except Bengal and Assam had surplus budgets. Revenue receipts increased several times, mainly on account of war-time conditions and also because the Provinces levied a number of new taxes and increased the rates of existing ones; there were remarkable increases in receipts under Provincial, *i.e.*, Liquor and Drugs, Excises, and in the Provincial share of Income-tax. Most Provinces were under Section 93 administration. All development work was stopped. The Provinces are now faced with a heavy programme of expenditure without any corresponding increase in revenue. On the contrary, even apart from voluntary abandonment of revenue as in the case of Liquor Excises, the revenue is likely to go down much below wartime levels. Land revenue, both in the permanently and temporarily settled provinces, is not likely to expand. State purchase of zamindaries will not bring any return for years to come. In ryotwari Provinces, remissions are likely to be more liberal than before, and there is thus little prospect of an increase in land revenue. Receipts from stamps and registration fees are not likely to increase much, while forest revenue will perhaps dwindle on account of large scale felling during the war. Receipts from sales tax, electricity tax and entertainment tax may not fall, though they will be below the war-time peak for some time to come.

19. During the war and after, most of the Provincial Governments have practically exhausted the entire field of taxation reserved for them. Moreover, Provincial Governments have to share the Provincial field with Local Bodies, and on that account too, need adequate resources. A substantial transfer of revenues from the Centre to the Provinces, therefore, seems inevitable, if essential and overdue programmes of social service and economic development have to be undertaken.

20. At this stage, we would refer to the adoption, by most Provincial Governments, of a prohibitionist policy; and of the inevitable loss of substantial revenue by all of them. Obviously, it is for the provinces to find alternative provincial resources from which to recoup the loss; and in any case, it would not be practicable for provinces to expect sufficient assistance from the Centre for this purpose, at any rate for many years. The point that we wish to emphasise is that it will be for the Provincial Governments to balance the urgency of schemes of development against the advisability of social reforms like prohibition, and that in any case, they must not embark on schemes, whether of reform or development, depending merely on the possibility of obtaining assistance automatically from the Centre.

21. To turn now to the Centre, it has been working on deficit budgets. The large surpluses that were expected sometime ago have not been, and are not likely to be realised, mainly because of the food shortage, the refugee problem and other causes arising out of the partition of the country, particularly, continued heavy expenditure on Defence. These are, however, temporary problems, and we consider that the financial position of the Centre is essentially sound. As these temporary problems are solved, the budgetary position of the Centre will necessarily get better. There is scope for improvement in the administration of Central taxes, and particularly of taxes on income. In respect of taxes on income, it should be possible for the Centre not only to collect more in future in the ordinary course every year, but to secure for the exchequer, by legislative changes, if necessary, the large sums that are believed to have been successfully kept back from the Government in recent years. We do not, however, expect any appreciable change under Customs and Excise; and we do not expect Railway contributions on anything like the scale during the war. Even after the temporary problems referred to above have been solved, expenditure on Defence and Foreign Affairs would still be substantial. The Defence Services will probably be reorganised and re-equipped, and it is not possible to foresee what would be the scale of expenditure for properly equipped defence services even on a peace-time basis. There is little prospect on the other hand of reduction in the service of the national debt but there is, however, scope for reduction in the existing civil expenditure.

22. The problem before us is how to transfer from the Centre to the Provinces, sufficient amount which, while not placing too great a strain on the Centre, would provide adequate resources for the inauguration of useful schemes of welfare and development by the Provinces. While the Centre, on its present basis, may not be in a position to part with substantial sums, we feel that with the resolution of its temporary difficulties and improvement in its tax administration, together with the levy and collection of taxes evaded in the past, it can with no serious risk to its own budget part with sizable sums every year. We are suggesting later in detail how these sums should be regulated. We have already referred to the need for Provinces having clear priorities as between contending demands for money, and we have no doubt that the Provinces will in the earlier years utilise the additional resources now placed at their disposal by concentrating on schemes that would add to the productive capacity of the country and consequently the income of the people and thus enable the provinces to embark on further schemes of reform and development.

Claims of Provinces

23. Every Province has drawn pointed attention to the urgency of its programmes of social service and economic development and to the limited nature of its own resources, both existing and potential, and all of them have asked for substantial transfer of revenues from the Central sources. A summary of the detailed suggestions made by them, which very considerably, is set out in Appendix III.

24. On the question of apportionment of income-tax among Provinces also, the provinces differ widely in their views. Bombay and West Bengal support the basis of collection or residence, the United Provinces that of population, and Bihar a combined basis of population and origin (place of accrual); Orissa and Assam want weightage for backwardness. East Punjab, while suggesting no basis, wants her deficit of Rs. 3 crores somehow to be met.

25. In the case of excise taxes, the bases suggested are production, collection, consumption and population, while Assam suggests some weightage for its low level of revenue and expenditure. Assam has further pressed for special treatment of excises collected on wasting assets, *e.g.*, the petroleum raised in Assam. Assam also wants a share of the export duty on tea.

General Observations

26. Before we proceed further we would make a few general observations.

India has federal form of Government, and every federation is based on a division of authority and involves a certain amount of compromise. In this country, federation has been the result of gradual devolution of authority. It has not come into existence through agreements among sovereign States as in some other federations.

27. What we have to do is to distribute the total available resources among Federal and Provincial Governments in adequate relation to the functions imposed on each; so, however, that the arrangements are not only equitable in themselves and in the interests of the country as a whole but are also administratively feasible. We have also to ensure that there is not too violent a departure from the *status quo*, and also to see that while we have as much uniformity as possible, weak Units are helped at least to maintain certain minimum standards of services.

28. The basic functions of a Federal Government are Defence, Foreign Affairs and the service of the bulk of the national debt, and they are all expensive functions, particularly in the light of the limited resources of the country. The head "Communications" would ordinarily at least pay for itself. The Federal Government may also have to assume leadership in the co-ordination and development of research and higher technical education. Normally, however, apart from war or large scale internal disorder, the expenditure of the Centre should be comparatively stable. The needs of the Provinces are in contrast, almost unlimited, particularly in relation to welfare services and general development. If these services, on which the improvement of human well-being and increase of the country's productive capacity so much depend, are to be properly planned and executed, it is necessary to place at the disposal of Provincial Governments adequate resources of their own, without their having to depend on the variable munificence or affluence of the Centre. The Provinces must, therefore, have as many independent sources of revenue as possible. On the other hand, it is not practicable to augment their revenues to any considerable extent by adding more subjects to the Provincial Legislative List, without simultaneously upsetting the equilibrium of the Centre. We cannot, therefore, avoid divided heads; and what we have to aim at is to have only a few divided heads, well

balanced and high-yielding, and to arrange that the shares of the Centre and the Provinces in these heads are adjusted automatically without friction, or mutual interference.

29. In this country the lack of sufficient economic and financial statistics and other similar data is a great handicap. Therefore, the allocation of resources has to be made largely on the basis of a broad judgment, at any rate until the necessary data become available. We attach great importance to the collection of these statistics and to connected research, and trust that the Government will make the necessary arrangements without delay. In the meantime we have made our recommendations on the best judgment we could give to the exiguous data available.

Lists of taxes for the Centre and the Units

30. We recommend no major change in the list of taxes in the Federal Legislative List as recommended by the Union Powers Committee. We however, recommend the substitution of the limit of Rs. 250 for Rs. 50 in clause 200 of the Draft Constitution relating to taxes on professions, trades, callings and employments. We observe from the Draft Constitution that it has been proposed to transfer to the Federal Legislative List stamp duty on transfer of shares and debentures, but we presume that the duties will continue to accrue to the Provinces. In view of the far-reaching effects on public credit and finance of Stock Exchange transactions, we consider that the Centre should have the power to legislate for the regulation of such transactions. If such regulation involves the levy of taxes, we recommend that such taxes should be retained by the Centre except that if the taxes take the form of mere duties on transfers of shares and debentures, the Provinces should have these duties just like other Stamp duties. We accordingly recommend the entry in the Federal Legislative List of a new item "Stock Exchanges and futures market and taxes other than Stamp duties on transactions in them".

31. In the list of taxes in the Provincial Legislative List, we recommend the following changes:—

(1) In entry 43, the words "hearths and windows" may be deleted. Such taxes are not likely to be levied. In any case, they would be covered by the word "buildings".

(2) In entry 53, the word "cesses" should, we think, be replaced by the word "taxes".

(3) Similarly, in entry 56, we would substitute the word "taxes" for the word "dues".

(4) In entry 50, we would make the following changes:—

(a) for the word "sale", we would substitute "sale, turnover or purchase", in order to avoid doubt.

(b) We would also add words such as "including taxes in lieu thereof on the use or consumption within the Province, of goods liable to taxes by the Province on sale, turnover or purchase". This addition is suggested in order to prevent avoidance by importing for personal use from outside the province.

32. One of the Provincial Memoranda has suggested that the entry "State Lotteries" should be transferred to the Provincial List, but, as we do not wish to encourage State Lotteries, we should prefer the subject to remain Central where, too, we hope, it will not be used.

Shares in certain taxes

33. We have no new items to suggest for insertion in the Provincial Legislative List.

34. The Federal Government will levy and collect all the taxes in the Federal Legislative List. But, according to our recommendations in the following paragraphs the Centre will retain the whole of the net proceeds of the following taxes only, *viz.*:—

(1) Duties of customs, including export duties.

(2) Taxes on capital value of assets and taxes on the capital of Companies.

(3) Taxes on Railway fares and freights.

35. At present, the Central Government shares the net proceeds of the Jute Export duties with the jute-growing Provinces and has to hand over to the Provinces the whole of the net proceeds of taxes on railway fares and freights, if levied. As regards the latter, we recommend that, if such taxes are to be levied at all, they should be wholly Central, for, we cannot see any difference in substance between such taxes and a straight addition to fares and freights. As regards the former we are of the opinion that an export duties are capable of very limited application and have to be levied with great caution; they are unsuitable for sharing with the Provinces.

36. It is necessary, however, to compensate the Provinces concerned for the loss of this item of revenue, and we recommend that, for a period of 10 years or till the export duties on jute and jute products are abolished, whichever may be earlier, fixed sums as set out below be paid to these Governments as compensation every year.

PROVINCE	AMOUNT
	Rs.
West Bengal	100 lakhs.
Assam	15 ,,
Bihar	17 ,,
Orissa	3 ,,

In arriving at these figures which we have based on the figures of pre-war years, we have taken all relevant circumstances into account, and in particular the concentration of manufacture in West Bengal. If at the end of ten years, which we think should be sufficient to enable the Provinces to develop their resources adequately, the Provinces still need assistance in order to make up for this loss of revenue, it would no doubt be open to them to seek grants-in-aid from the Centre, which would be considered on their merits in the usual course by the Finance Commission.

37. Of the remaining Federal Taxes, we recommend that the net proceeds should be wholly or partly given away to the Provinces as indicated below:

38. Under the present arrangement the Provinces receive 50 per cent of the net proceeds of income-tax, except what is attributable to Chief Commissioner, Provinces and taxes on federal emoluments. The net proceeds of the Corporation Tax are also excluded for the purpose of the sharing. Subject to what we have said in paragraph 49 regarduing tax on agricultural income, we recommend that, while the net proceeds attributable to Chief Commissioners' Provinces should be retained wholly by the Centre, the other reservations should go, and that the Provinces should get not less than 60 per cent of the net proceeds of all income tax including the net proceeds of Corporation Tax, and taxes on federal emoluments. For the purpose of the division, income-tax will mean any levy made under the authority of the entry "Taxes on Income" in the Federal Legislative List.

39. We also consider that over and above its share in the net proceeds retained by it normally, the Centre should be empowered to levy a surcharge whenever conditions require such a levy; obviously such occasions should be rare are not last for unduly long periods.

40. Excise duties are ordinarily closely connected with customs duties and, barring liquor and drug excises, which we consider, should continue to remain Provincial are inherently not suited for provincial taxation. On the other hand, they are only a species of consumption taxes of which another species namely, sales, turnover and purchase taxes have been the subject of provincial taxation for some time. The Memoranda received by us from the Provincial Governments are almost unanimous in demanding some share under excises; and our problem is to find not only more resources for the units but to make their revenues more balanced. If it was possible to have excises on commodities not subject to Customs duties (whether revenue or protective) or not competing, or capable of competing with, or of substitution for, commodities subject to customs duties, *e.g.*, on rice or wheat or millets or on jute and jute goods consumed in India, we see no reason why such excises or a share thereof should not be allotted to the units, apart from the general political objection to the division of heads, *viz.*, the divorce of benefit from responsibility. But such excises are not likely to be levied. Again, it is obvious that Excise duties on commodities subject to a protective tariff or even a high revenue tariff could not be conveniently shared. In the circumstances, the utmost that we can suggest by way of assistance in this respect to the Provincial Governments is to hand over to them a share of one of the important Central Excises on a commodity not receiving tariff protection, *viz.*, Tobacco. Incidentally, the effective administration of this excise requires the active co-operation of Provincial Governments, which would be better forthcoming if they had a share in the tax. We are averse to giving the units a share in too many Central Excises; for, such an arrangement would not only magnify the political objection of benefit without responsibility but lead to administrative inconvenience, since the rates could not be altered except by the consent of all the beneficiaries.

We accordingly recommend that 50 per cent of the net proceeds of the excise duty on tobacco should not form part of the revenues of the Federation but should be distributed to the Provinces.

41. It will be seen from what has been said above that we are not in favour of the suggestion made in item VIII of the Terms of Reference, *viz.*, that the Centre should be allocated only the excises on specified commodities, the rest of the field of excise being left to the Provinces.

42. These duties cannot be administered satisfactorily except by or in the closest touch with the income-tax staff; and in any case, if the Centre is to part with a substantial amount of taxes on income and also a part of certain Central excises, it is appropriate that it should get a share of the estate and succession duties. This will also give to the Federal Government a direct interest in the duty. Subject to what we have said in paragraph 49 about taxes on agricultural property, we recommend that not more than 40 per cent of the net proceeds of such duties should be retained by the Centre.

43. We recommend the continuance of the *status quo*, *i.e.*, the legislation in respect of the duties on the specified documents should be Central but Provinces will collect and retain the duties.

44. These taxes are not suitable except for purely local purposes, *i.e.*, for the benefit of municipalities, pilgrim funds, etc., but they can be conveniently levied and collected only by the Centre. The existing provisions may stand.

Grants-in-Aid and Subventions

45. Item II of our terms of reference refers to Grants-in-aid.

Assam and Orissa now get fixed subventions of Rs. 30 and Rs. 40 lakhs per annum, respectively. The recommendations that we have made for the increase in the Provincial share of income-tax and the transfer of a share in the excise on tobacco will increase their revenues substantially like those of other Provinces. Even so, however, we have little doubt that these two Provinces will still require fixed subventions on higher scales than at present.

The position of East Punjab is peculiar. Everything there is unsettled, and it will take some time for things to settle down. It is clear, however, that this Province will require a substantial annual subvention for some time to come.

The position of West Bengal is uncertain, and it is not clear how her finances will shape as a result of the partition. The liability that she will have to take over as a result of the partition is not yet known. All told, however, she will perhaps need some temporary assistance.

46. For lack of time and data, we have not been able to assess the subventions required by these four Provinces. We, therefore, recommend that the Central Government should immediately take up the question so that the amounts required by each of these Provinces may be determined in time. The amounts should be subject to periodical review by the Finance Commission to which we refer later.

47. We have suggested elsewhere that till the Finance Commission has been able to recommend a better basis of distribution, a part of the divisible pool of income-tax should be used in order to mitigate hardship in individual cases. The provision also contains an element of grants-in-aid.

48. It is clear that during the developmental stages of the country it will be necessary for the Centre to make specific purpose grants to the Provinces from time to time. The provisions of clause 203 of the Draft Constitution seem to be adequate for the purpose. We have considered the question whether, as in Australia, grants should be made in order to equalise, or at any rate to reduce the disparity between the levels of services and of severity of taxation in the different provinces. There is undoubtedly something attractive in seeking to bring up the backward units at least to 'average' standards, both in effort (severity of taxation) and in performance (standards of services). In Australia, the maximum difference between the levels is said to be of the order of 20 per cent and the number of unit States is small. In India, on the other hand, as for example in the U. S. A., the difference in the levels is very wide and the number of units larger when acceding States come into the picture. In such a background 'averages' would be mere mathematical concepts totally unrelated to actual facts. On the other hand, even in a Federation of autonomous units, there is a great deal to be said for helping the less prosperous units to come up to the level of the more prosperous ones. As in all such matters we must take a realistic decision with reference to the conditions in our country. While we do not recommend the adoption in this country of the Australian system, we have no doubt that the Centre, when distributing specific purpose grants under clause 203 of the Draft Constitution, will bear in mind the varying circumstances in the different Provinces.

48-A. Section 199 of the Draft Constitution provides for special assistance to Assam in respect of expenditure for promoting the welfare of scheduled tribes in the Province. We agree with this provision. It has been represented to us on behalf of Orissa that a similar provision should be made for assisting her to develop the backward areas of the Province. In the absence of any data, we have been unable to assess the measure of assistance, if any, required by this Province, and we content ourselves with expressing the view that if the Central Government, after a due examination of the question in all its aspects, decide the special assistance is necessary it should be provided on adequate scale.

Taxes on Agricultural Income and Property

49. It is obvious that the taxation of agricultral income by the Provinces, while all other income is taxed by the Centre, stands in the way of a theoretically sound system of income-tax in the country. We should, therefore, have liked to take this opportunity to do away with this segregation. In view of the ease with which the origin of agricultural income can be traced, it could be arranged that the tax from such income, even though levied and collected by the Centre as part of an integrated system of income-taxes, should be handed back to the Provinces; and it could be further arranged that till such time as the Centre in fact levied a tax on agricultural income, the Provinces already levying this tax might continue to levy it without restriction and with full power to vary the rates of tax. The interests of Provinces could thus be fully protected, and there could, therefore, be no financial objections from them. On the other hand, the present arrangement has the political merit of keeping together in one place both benefit and responsibility, a rather important point, seeing that the Provinces will have full control over but few important heads of revenue. A few provinces have, in fact, levied the tax and are administering it for some time. Perhaps also, the Provinces can administer this particular tax with greater facility than the Centre. For the present, therefore, we have decided to continue the *status quo*, but, in view of the importance of the matter, would recommend that the Provinces should be consulted at once and if a majority, including of course those now levying the tax, agree, tax on agricultural income may be omitted from the Provincial List of subjects, consequential changes being made elsewhere in the Constitution. Our foregoing remarks apply *mutatis mutandis* to Succession and Estate Duties on agricultural property also.

Division of proceeds of Revenue between Provinces

50. *Income-tax.*—As regards the basis of distributing between Provinces the share of proceeds from taxes on income, we are of the opinion that no single basis would lead to equitable results. Origin or *locus* of income is no doubt relevant, but in the complex industrial and commercial structure of modern times, where a single point of control often regulates a vast net-work of transactions, where the raw materials come from one place, are processed in another, manufactured in a third, marketed wholesale in a fourth and ultimately sold in retail over a large area, contracts are made at places different from where they are performed, money is paid in at one place and goods delivered at another and more than one of these stages relate to the same tax-payer the assignment of a share of profits to each stage can only be empirical or arbitrary.

51. Again, the residence of the tax-payer is an important factor, but apart from the artificial legal definition of residence for income-tax purposes, the predominance of joint stock enterprise in business, the dispersion of the shareholders of companies all over the country and even outside, the possibility (emerging from the artificial definition) of simultaneous residence in more than one area, the non-assessment (due to various reasons) of a large number of shareholders, and the absence of authoritative, *i.e.*, tested, information in the income-tax records as to the province of residence of a resident of India (for, today, it is immaterial to the Income-tax Department in which particular Province on assessee is resident), all these together make this criterion of residence a difficult factor to apply in practice in distributing the proceeds of the tax. Even if the statistical difficulties were got over, residence could be changed at the will of the tax-payer.

52. Another possible criterion is the place of collection. This place is usually the principal place of business of the tax-payer, or his residence, if he is not

carrying on a business or profession. The objection to this factor is that it is unfair to the areas of origin and sale which it completely ignores, while it gives far too much weight to the place of control of a business, which is usually, though not necessarily, the place of collection. Moreover, even more than in the case of residence, the place of collection can be easily altered at the will of the tax-payer.

53. Another possible basis is that of needs, *i.e.*, the shares would be regulated somewhat like grants-in-aid, and rather than go into elaborate enquiries for this purpose, the population of a Province could be taken as a rough measure of its needs. The objection to this basis is that a 'share' is something to which a Province is entitled because its citizens or things have in some measure contributed to the fund, while a grant is something given to it without regard to its contribution to the Centre or to any common pool.

54. We have said enough to show the difficulties of the problem, but the difficulties have somehow to be faced and met, unless we keep the whole of the taxes on income as Central and permit Provinces simultaneously to levy a Provincial income-tax on the basis of origin. In our opinion the latter course is not feasible in the circumstances of this country even if justifiable in theory; and pending enquiry by the Finance Commission the setting up of which we suggest later, we have no choice except somehow to make the distribution on as equitable a basis as can be devised in the circumstances.

55. We propose to proceed on the basis of collection as well as population and also to make some provision for adjustment on the basis of need. We recommend that the Provincial share, *i.e.*, 60 per cent. of the net proceeds be distributed among the Provinces, as follows:—

20 per cent. on the basis of population.
35 per cent. on the basis of collection.
5 per cent. in the manner indicated in paragraph 56.

60

For the distribution of the first two blocks, population figures of the previous census and collection figures as certified by the Auditor-General should be accepted as authoritative.

56. The third block of 5 per cent. should be utilised by the apportioning authority as a balancing factor in order to mitigate any hardship that may arise in the case of particular Provinces as a result of the application of the other two criteria; in distributing this block it would be open to the authority to take into account all relevant factors.

Excise duty on Tobacco

57. In our view, the most equitable method of distributing this duty is on the basis of estimated consumption. We have no doubt that the Government will take steps to obtain necessary statistical information if it is not already available.

Estate and Succession Taxes

58. These taxes have not so far been levied. One of the hurdles to be crossed before they can be levied is the determination of the manner of distribution of the net proceeds among Provinces. Until the taxes are actually levied and collected for some time, no data about their incidence will be available. Hence, the levy will have to start with some *a priori* basis of apportionment among Provinces. We accordingly recommend that until the Finance Commission is in a position to evolve a better method on the basis

of data available to it, the net proceeds should be distributed among the Provinces as follows:—

The net proceeds attributable to real property—On the basis of the location of the property.

Of the balance—

75 per cent on the basis of the residence of the deceased;

25 per cent on the basis of the population of the Province.

The administration and distribution of these taxes would, in the ordinary course, fall on the Central Board of Revenue, but it would be necessary to empower an appropriate authority to adjudicate in the case of disputes between Provinces as to the residence of individuals.

Effect of the proposals

59. The net effect of all our recommendations together is that, on the present basis of revenue, the Centre will have to transfer to the Provinces a sum of the order of Rs. 30 crores annually. It will recover a part of this loss by the imposition of the Estate and Succession Duties, of the net proceeds of which it will retain 40 per cent. We believe that it will not be beyond the capacity of the Centre to part with this amount annually during the next five years, though it must cause some strain, while at the same time the transfer will enable the Provinces to start their programme of essential social services and economic development.

60. In our recommendations regarding the distribution of proceeds of taxes among the Provinces, we have not only proceeded on more than one basis, but have provided for an element of flexibility in order to mitigate hardship. We have also provided for a periodical review so that the method of apportionment can be adapted to changing conditions from time to time on the basis of experience. We have further provided for grants-in-aid both to the weaker Provinces and to Provinces in difficulty.

61. We have also tried to make the whole arrangement as automatic and free from interference as possible. The basic features of the scheme will be embodied in the Constitution itself, while periodic changes will be made by the President on the recommendation of the Finance Commission, which we hope, will command the confidence of all. As frequent changes are undesirable, we have recommended a five-yearly review, though in special circumstances the Finance Commission may embark on a review at a shorter interval. The Provinces will now be sure of their position and can go ahead with their plans.

62. It is needless for us to add that to the extent that the Centre transfers its resources to the Provinces in the shape of new or increased shares in revenue, its ability to give grants to the Provinces for specific or other purposes must be correspondingly reduced.

63. We may not have been able in our proposals to satisfy everybody or to provide for every contingency that may possibly arise in the future, but we have tried to do the best possible under the circumstances.

Finance Commission

64. For reasons already stated, our recommendation as to the initial basis of apportionment among Provinces is not intended to be permanent. Conditions may change. The working of the scheme for some time will in itself produce some data that would indicate the nature and direction of the changes required. It is necessary, therefore, to have a periodical review of the whole position by a neutral expert authority.

65. We recommend for this purpose, among others, the appointment of a high level Tribunal of five members including a Chairman who has been, or is, holding high judicial office, not lower than that of a Judge of a High Court. This Tribunal may be called the Finance Commission. There may not ordinarily be enough work for the Commission to keep it busy continuously, and the members need not, therefore, devote their whole time to the work. The members should be appointed by the President in his discretion if only because a Commission of this kind would have frequently occasion to deal with points of conflict between the Centre and the Units. While we would not lay down any conditions in the Statute as to how these members should be selected, we recommend that two should be selected from a panel of nominees of Units Governments and two others from a panel of nominees of the Central Government, the Chairman being selected by the President himself. One at least of the five should possess close knowledge of the finances and accounts of Governments, while another at least should have a wide and authoritative knowledge of economics. It would be an advantage if one or more were public men with vide experience. It would be further advantage if a member possessed more than one qualification, and steps should be taken to secure the services of such individuals. The appointments might be made for 5 years and be renewable for another five years.

66. Between now and the setting up of the Finance Commission, we recommend that the Central Government should take steps in consultation with the Provinces, to collect, compile and maintain statistical information on certain basic matters such as the value, volume and distribution of production, the distribution of income, the incidence of taxes, both Central and Provincial, the consumption of important commodities, particularly those that are taxed or likely to be taxed, etc. The Finance Commission, when set up, would then have some basic information to go upon, and would no doubt call for such further information as it may need. It would also, to the extent necessary, arrange for continuous examination and research in respect of all important matters.

67. The Finance Commission should be entrusted with the following functions:—

(a) To allocate between the Provinces, the respective shares of the proceeds of taxes that have to be divided between them;

(b) To consider applications for grants-in-aid from Provinces and report thereon;

(c) To consider and report on any other matter referred to it by the President.

68. While these categories would exhaust the duties of the Commission, it should be open to the Commission to make any recommendations it may think expedient in the course of the discharge of these duties. It may, for example, suggest a variation in the heads of revenue assigned to the Provinces, *i.e.*, the transfer of new heads or the withdrawal of existing heads, or increases in the shares of existing heads or a reduction in these shares. In making all such recommendations, the Commission will take into account all relevant matters, including the state of finances of the Centre. Its recommendations, in so far as they do not involve any change in the Constitution, would, when accepted by the President, be given effect to by him by order, while recommendations involving a change in the Constitution, if similarly accepted by him, would be dealt with like any other proposed amendment to the Constitution.

69. The Commission's first function would be of the nature of an arbitration, and therefore, the Commission's decisions will be final. As regards

the second function, we have no doubt that the recommendation of the Commission in respect of grants-in-aid would be given the utmost weight by the President and not ordinarily departed from by him.

70. The basis for the allocation of revenues referred to in item (a) should ordinarily be settled by the Commission at intervals of five years, but it should be open to the Commission to shorten the interval if it feels satisfied in special circumstances that such shortening is called for.

71. We would further recommend, in order to save time, that the Finance Commission may be set up in advance of the coming into effect of the Constitution, and its status regularised after the Constitution comes into effect.

Residuary Powers of Taxation

72. It appears that under the new Constitution, residuary powers will be vested in the Centre, so far as the Provinces are concerned, while the corresponding residuary powers in respect of the States will be vested in the States themselves. The question has therefore been raised whether, as a consequence, as many specific taxes as possible should not be entered in the Provincial List of subjects. We cannot think of any important new tax that can be levied by the Provinces, which will not fall under one or the other of the existing categories included in the Provincial List. We think that the chance of any practical difficulty arising out of the proposed constitutional position is remote, and, in any case, it seems to us that if a tax is levied by the Centre under its residuary powers, there will be nothing to prevent the proceeds of the whole or a part of this tax being distributed for the benefit of the Provinces only. As a matter of abundant caution, however, it may be laid down in the Constitution that if any tax is levied by the Centre in future under its residuary powers, and to the extent that the States do not agree to accede to the Centre in respect of the corresponding subject, the whole or a part of the proceeds of the tax shall be distributed between the Provinces and the acceding States only.

This disposes of Item IX of our Terms of Reference.

Exemption of Provincial Governments from Taxation

73. Section 155 of the Government of India Act provides that profits from trading by a Provincial Government would be taxable only if the trade was carried on outside the Province. The exemption from Central taxation of trade by Provincial Governments carried on within the provincial limits did not matter much in the past; for the Governments had few trading operations. With the present tendency towards nationalisation (*e.g.*, many provinces have already taken up quite seriously the nationalisation of road transport), the Centre should have some power to levy either income-tax or a contribution in lieu of income-tax in respect of these trading activities. Disputes as to such contributions should, we consider, be examined and adjudicated upon by the Finance Commission to which we have already referred. We feel that if nationalisation of industries or trades takes place rapidly, the whole question would have to be reviewed *de novo*, for the entire structure of the tax system of the country would be completely changed.

74. In the meantime we make the following recommendations:—

(a) The existing practice should continue in respect of trading operations of the Central Government, *i.e.*, no income-tax should be levied on the profits. It should be open to the Centre, however, to levy a contribution, as in the case of Railways, for its sole benefit from such operations. If the trading is carried on by a separate juristic person, tax will be levied even if the Government is the dominant shareholder.

(b) Tax should be levied on the trading operations of Units (as also of local bodies), whether carried on within or without their jurisdiction; and the tax or the contribution in lieu thereof should be treated as ordinary income-tax revenue for the purpose of the divisible pool. We presume that if there are no profits, there will be no contribution; but if this presumption is wrong, we suggest that the contribution should be treated as part of the divisible pool of income-tax.

(c) We recommend that quasi-trading operations incidental to the ordinary functions of Government such as the sale of timber by the forest department or of jail products by the jail department should not be treated as trading operations for this purpose.

Emergency Provisions

75. The needs of the Centre in times of emergency, such as war or large scale internal disorder, cannot be provided for through the detailed allocation of heads of revenue, or of shares therein. It is obviously not possible to legislate how emergencies should be met. We would suggest that there should be a special provision in the Constitution authorising the President in an emergency to suspend or vary the financial provisions in such manner as he may think best in the circumstances. For example, if there is a war and an Excess Profits Tax is levied, it might be necessary for the Centre to retain the whole of this tax for itself.

Procedure in Financial Matters

76. Item X of our terms of reference is as follows:—

"Is it necessary to make any modifications in the existing provisions as regards procedure in financial matters, contained in Sections 33 to 37 and 78 to 83 of the Government of India Act, 1935?"

77. The present financial procedure in the federal sphere is laid down in sections 33—37 of the Government of India Act, 1935. The corresponding clauses in the Draft Constitution as prepared by the Secretariat of the Constituent Assembly are 74, 75 and 77—81. We have two recommendations to make:—

(1) When a money bill is sent from the Lower House to the Upper, a certificate of the Speaker of the Lower House saying that it is a money bill should be attached to, or endorsed on, the bill and a provision to that effect should be made in the Constitution on the lines of the corresponding provision in the Parliament Act, 1911. This will prevent controversies about the matter outside the Lower House.

(2) After clause 80, a provision may be made making it necessary for Government to approach the Legislature for regularising any excess expenditure that might be discovered in audit after the close of the year. This is, in fact, done even now, but there is no statutory obligation to do so.

Subject to these two recommendations, we approve of the provisions in the Draft Constitution.

78. Financial procedure in the Provincial field is governed by sections 78—82 of the Government of India Act, 1935. The corresponding provisions in the Draft Constitution occur in clauses 149—153. We recommend—

(1) that in a Province with a bicameral Legislature, if any, the powers of the Upper House over money bills should be exactly the same as at the federal level;

(2) that the new provision, in respect of a vote on excess grants, recommended by us at the federal level should be repeated at the provincial level also.

79. It is usual in written democratic constitutions to provide that no money can be drawn from the treasury except on the authority of the Legislature granted by an act of appropriation. In this country, the practice has been to authorise expenditure by resolutions of Government after the demands have been voted, and not by law. As the existing practice has been working well in this country, appropriation by law does not appear to be necessary.

Auditor-General

80. Though the question has not been specifically referred to us, we consider that the status and powers of the Auditor-General are so closely connected with financial procedure that we have gone into this matter also. The provisions in respect of the Auditor-General of the Federation are contained in clauses 106-109 of the Draft Constitution, and those in regard to the Auditor-General of the Provinces, in clauses 174-175. In substance, all these clauses repeat the existing provisions in the Government of India Act. We consider the provisions to be adequate for the purpose of securing the independence of the Auditor-General. We notice that the Auditor-General of India is to perform the functions of the Auditor-General in respect of the Provincial Governments also for an initial period of three years, and thereafter, until a particular Provincial Government chooses to appoint its own Auditor-General. We favour the continuance of a single Auditor-General for the Government of India as well as for the Provincial Governments, and it is possible that the Provincial Governments will also prefer that course, and will choose not to use their power of appointing separate Auditor-General for the Government of India as well as for the Provincial Governments, and it is possible that the Provincial Governments will also prefer that course, and will choose not to use their power of appointing separate Auditor-General of their own. The Draft Constitution, however, gives them the option to appoint Auditors-General if they think fit so to do. We are not sure whether it is possible altogether to do away with this option, much as we should like to do so; but if the option remains, we recommend that the provisions of sub-clause 3 of clause 174 should be amended so as to make the Auditor-General of a Province eligible for appointment as Auditor-General of another Province also.

Borrowing Powers

81. This question is covered by Item I of our Terms of Reference.

The present position is that the Provinces have the freedom to borrow in the open market in India except when they are indebted to the Centre.

The most outstanding advantage of the freedom of borrowing is the sense of financial responsibility it creates; for, there is no more accurate, sensitive and dependable meter of the credit of a borrowing Government than the reaction of the securities market. We do not therefore wish to withdraw this freedom. Nevertheless, it is necessary to have some machinery which would ensure that borrowing Governments do not, by their competition, upset the capital market. This machinery is now provided through the Reserve Bank which advises all the Governments, but in view of the ambitious programmes of development both by the Centre and by the Units, it may become necessary to set up some kind of expert machinery, both competent and definitely empowered, to fix the order of priority of the borrowings of the different Governments. In some countries, this co-ordination is effected either by a Ministerial Conference or by a Loans Council. Such machinery should not affect the responsibility of a Government for its borrowing policy, and

should help only in the timing of the loan and avoidance of unnecessary competition. The co-ordination by the Reserve Bank has worked well in practice, and so long as it works well we do not recommend any change. We assume that there will be no distinction between federating States and the Provinces in this respect.

82. We are of the opinion that it should not be open to a Provincial Government or to a Government of a State to go in for a foreign loan except with the consent of the Federal Government and except under such conditions, if any, as the Federal Government may think fit to impose at the time of granting the consent. We notice, however, that there is an entry, *viz.*, "18. Foreign Loans" in the Federal Legislative List in the Draft Constitution. We are not sure whether, the insertion of this entry in the Federal Legislative List is enough to prevent the Government of a Unit from going in for a foreign loan. We, therefore, recommend that the point be examined, and if the provision is not found to be adequate, a specific provision should be made in clause 210 of the Draft Constitution making it necessary for the Government of a Unit to obtain the consent of the Federal Government before going in for a foreign loan.

Problem of Indian States

83. The points at issue are contained in items III, IV, V, VI and XI of our terms of reference.

This part of our work is the most difficult party thereof, and the difficulty arises as much from the lack of statistical data as from the complications of the problem itself; for, not only do conditions differ widely between the Provinces as a whole and the States as a whole, but from State to State, so that it is difficult to apply a common yard-stick.

84. The Union Powers Committee of the Constituent Assembly in Para. 2 (d) of their report, dated 17th April, 1947, has expressed its view on this subject in the following terms:—"We realise that, in the matter of industrial development, the States are in varying degrees of advancement and conditions in British India and the States are in many respects dissimilar. Some of the above taxes are now regulated by agreements between the Government of India and the States. We, therefore, think that it may not be possible to impose a uniform standard of taxation throughout the Union all at once. We recommend that uniformity of taxation throughout the Units may, for an agreed period of years after the establishment of the Union not exceeding 15, be kept in abeyance and the incidences, levy, realisation and apportionment of the above taxes in the State Units shall be subjected to agreements between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation." We entirely agree with these observations.

85. We assume that the ultimate object of the Federation must be to secure for the federating States the same, or nearly the same standards of economic development, fiscal arrangements and administrative efficiency as in the Provinces. It is only against this background that the States can have the same identity of interest with the Union as the Provinces have.

86. The first difficulty met with in our investigation is that many of the smaller States have neither a budget nor effective audit, so that adequate and reliable information about their financial position, on a basis permitting comparison with Provinces, is not available. We recommend accordngly that it should be made obligatory within as short a period as possible for each State to arrange for the preparation and authorisation of a periodical budget and the maintenance of proper accounts and audit and to send copies of its budget, accounts and audit reports to the Union Government.

87. In the absence of sufficient data, we are not in a position to make recommendations other than of a general nature. We are clear in our mind that the States should gradually develop all the taxes in the Provincial Legislative List so that they may correspondingly give up reliance on taxes in the Federal Legislative List. This process however would necessarily take some time and in the meanwhile it will be necessary to have transitional arrangements.

88. We will now take up Land Customs. We do not recommend the immediate abolition of Land Customs, for we find that such a course would lead to a serious dislocation in the finances of many States. Moreover, where there is no large re-export trade, these land customs, though a possible source of annoyance, are really of the nature of octroi duty levied at a few point of entry. On a long view, however, in the interests of the States themselves, these duties might be replaced by other taxes, such as sales and turn-over taxes. We recommend accordingly that Land Customs now levied by the States should be abolished during the next 10 years. As a first step it may be arranged that—

(1) a State shall not in future levy land customs on a commodity on which there is no such duty now;

(2) a State shall not after a fixed date, increase the rate on any commodity; and

(3) a State levying land customs should grant refunds on re-exports.

Gradual abolition over a period of 10 years should not cause any serious dislocation to the finances of these States, nor can there be any question of paying any compensation to these States, for the simple reason that the Union Government will not gain any corresponding revenue.

89. Maritime customs should be uniform all through the Union, and the Federal Government should take over the administration of such customs in all the maritime States. If this arrangement results in the loss of any State of the revenue now enjoyed by it, it is only fair that the State should be compensated for the loss. Pending determination of the appropriate compensation in each case by a States Commission, the appointment of which we recommend in a later paragraph, each State may be given an annual grant equal to the average revenue from this source during the last three years. The right of Kashmir to a rebate on sea customs may be similarly abolished on payment of a similar grant.

90. The Federal Government may levy Central Excises in all the States, but those States which now enjoy the benefit of a part or the whole of these revenues raised in their areas should, in lieu of such benefit, receive grants on the basis of the average revenue enjoyed by them from these sources during the last three years. In our opinion, neither this arrangement nor the one referred to in the foregoing paragraph should present any difficulty from the purely financial point of view either to the Union or to the States.

91. The Indian Income-Tax Act, with such modification as may be considered necessary by the President, may be applied to all the Federating States. The net proceeds of the tax attributed to the States may be credited to a States Income-Tax Pool and such portion not being less than 75 per cent. of the net proceeds attributable to each State, as determined by the President, may be paid back to the States.

We are aware that many problems will arise in the course of allocating these proceeds between the different states, but they are not insoluble, and can be solved on lines similar to those followed in allocating similar revenues between the Provinces.

92. The need for a uniform system of income-tax both in the Provinces and in the States has become urgent not only because of the facilities afforded for evasion and avoidance of the Central Income-tax by the existence of States with lower rates of taxation or no tax at all, but also because it is alleged that industries are being diverted artificially by the incentive of lower taxation to areas not inherently suited for the industries.

93. Though we do not favour any abrupt change in the *status quo*, we do not attach much weight to the argument that the States are, as a whole, industrially backward and that they cannot, therefore, stand the same high rates of taxation, particularly income-tax, as the Provinces can. If the productive capacity of a State, and consequently its level of income, is low, it follows that the State will not have to contribute much by way of tax if it falls in line with the Provinces. If, on the other hand, the point is that industries should be artificially stimulated in the States somehow by the incentive of lower taxes, it is obvious that if the State is not suited for industrial development, the cost of bolstering up its industries must ultimately fall upon the Provinces and other States.

94. As already stated, we are not in a position to make detailed recommendations regarding the States. We recommend for this purpose the establishment of a States Commission with five members who should possess wide knowledge of the financial administration of Provincial, Federal or State Governments. Preferably, one of these members might be a member of the Finance Commission (for Provinces) referred to earlier in this report. The Commission should advise the President, as also the States, about their financial systems and suggest methods by means of which the States could develop their resources and fall into line with the Provinces as quickly as possible. One of the first tasks of the Commission will be to examine in detail the privileges and immunities enjoyed by each State, and also the connected liabilities, if any, and recommended a suitable basis of compensation for the extinction of such rights and liabilities. We consider in particular that the States Commission should deal with the problems before it with understanding and sympathy and suggest solutions which would not only be fair both to the States and to the Provinces, but enable the States to come up to the Provincial standards in as short a time as possible.

95. The States which come into the above arrangements would pay their contribution for Defence and other Central services through the share of the net proceeds of Central taxes retained by the Centre, and nothing more should be expected from those States. On the other hand, the States which accede but do not come into the above arrangements, should pay a contribution to the Centre, the amount of which should be determined by the States Commission having regard to all the relevant factors.

96. The constitutional arrangements in this respect, particularly during the interregnum of 15 years, should, in our opinion, be kept very flexible. The President should be enabled by order to adopt any financial arrangement he may find expedient with each State until such arrangement is altered by an Act of the Federal Legislature after necessary consultation with the States.

97. While the outlines which we have indicated above are capable of being applied to most of the major or even middle-sided States, it is, in our opinion, necessary to group together a number of smaller States in sizable administrative units before they can be brought into any reasonable financial pattern.

98. We are sorry that we have not been able to contribute anything more precise then we have done to this part of the terms of reference to us.

99. We enclose two Appendices (IV and V) one of which sets out in detail, as far as we have been able to collect, the rights and immunities enjoyed by various States, and the other setting out the total budgets of certain States and the part played by Land Customs in those budgets.

Summary of Recommendations.

100. (1) No major change to be made in the list of taxes in Federal Legislative List as recommended by the Union Powers Committee. (Para. 30)*

(2) The limit of Rs. 50 to be raised to Rs. 250 for taxes on professions etc. levied by Local Bodies. (Para. 30)*

(3) An entry to be made in the Federal Legislative List of a new item "Stock Exchanges and Futures Markets", etc. (Para. 30)*

(4) A few minor changes of a drafting nature to be made in the list of taxes in the Provincial Legislative List; and no new items for insertion in the Provincial Legislative List. (Paras. 31-33)*

(5) The Centre to retain the whole of the net proceeds of the following taxes, viz., (a) Duties of Customs including Export Duties; (b) tax on capital value of assets, etc.; (c) taxes on Railway fares and freights; and (d) Central Excises other than on tobacco. (Para. 34)*

(6) The grant of fixed assignments for a period of years to the jute-growing provinces to make up for their loss of revenue. (Paras. 35-36)*

(7) The net proceeds of the following taxes to be shared with the Provincial Governments, viz. (1) Income-tax, including Corporation Tax; (2) Central Excise on Tobacco; (3) Estate and Succession Duties. (Paras. 38-42)*

(8) The suggestion that the Centre should be allotted only the excises on specified commodities, not accepted (Para. 41)*

(9) Federal Stamp Duties and Terminal taxes on goods, etc., to be administered centrally, but wholly for the benefit of the provinces. (Paras. 43 and 44)*.

(10) Larger fixed subventions than now, necessary for Assam and Orissa, and subventions for limited periods for East Punjab and West Bengal, but no precise figures recommended for lack of data. (Paras. 45 and 46)*

(11) Grants-in-aid on the Australian model not favoured. (Para. 48)*

(12) Merging the tax on agricultural income in the Central Income-tax and similarly the Estate and Succession Duties on agricultural property in the similar duties on property in general to be examined in consultation with Provincial Governments and transfers made from the Provincial List of subjects, if necessary. (Para. 49)*

(13) Not less than 60 per cent. of the net proceeds of Income-tax, *including* Corporation Tax and the tax on Federal emoluments, to be divided between Provinces in the following manner:—

20 per cent. on the basis of population, 35 per cent. on the basis of collection and 5 per cent as an adjusting factor to mitigate hardship. (Paras. 55 and 56)*

(14) Not less than 50 per cent of the net proceeds of the excise on tobacco to be divided between Provinces on the basis of estimated consumption. (Para. 57)*

(15) Not less than 60 per cent. of the net proceeds from Succession and Estate Duties to be divided between the Provinces on the following basis:—Duties in

* Reference to paras. are to paras. in the original reports.

respect of real property on the basis of allocation of the property, and of the balance, three-fourths on the basis of the residence of the deceased and one-fourth on the basis of population. (Para. 58)*

(16) Net effect of the recommendations, to transfer annually a sum of the order of Rs. 30 crores from the Centre to the Provinces. (Para. 59)*

(17) A Finance Commission with a High Court Judge or ex-High Court Judge as Chairman and four other members to be entrusted with the following functions:—viz. (a) allocation between the Provinces of their shares of centrally administered taxes assigned to them; (b) to consider applications for grants-in-aid for Provinces and report thereon; (c) to consider and report on other matters referred to it by the President. (Paras. 65-67)*

(18) The Commission to review the position every five years, or, in special circumstances, earlier. (Para. 70)*

(19) A tax levied by the Centre under its residuary powers, not to enure to the benefit of a non-acceding State unless it agrees to accede to the Centre in respect of that subject. (Para. 72)*

(20) Trading operations of Units, as also of Local Bodies, whether carried on within or without their jurisdiction, to be liable to Central Income-tax or a contribution in lieu, but quasi-trading operations incidental to the normal functions of Government not to be taxed. (Para. 74)*

(21) The President to be empowered in an emergency to suspend or vary the normal financial provisions in the Constitution. (Para. 75)*

(22) A few minor changes suggested in regard to the procedure in financial matters. (Para. 77)*

(23) No change to be made in respect of borrowing powers of Units.—(Paras. 81-82)*

(24) Early arrangement to be made for the preparation of regular budgets and the maintenance of appropriate accounts and audit by all acceding States. (Para. 86)*

(25) States gradually to develop all the taxes in the Provincial Legislative List and correspondingly give up taxes in the Federal List. (Para. 87)*

(26) Maritime customs and exicises in States to be taken over by the Centre, the States being compensated therefor if necessary. (Paras. 89 and 90)*

(27) The Indian Income-tax Act to be applied to all the federating States, and 75 per cent. of the net proceeds attributable to the States to be divided between them. (Para 91)*

(28) A States Commission to be set up with five members with wide knowledge of the financial administration of Provincial, Federal or State Governments. (Para. 94)*

(29) The States Commission to examine the privileges and immunties etc. of States and to suggest suitable compensation for the extinction of these rights and liabilities. (Para. 94)*

(30) States which do not come into the arrangements to pay a contribution to the Centre to be determined by the States Commission. (Para. 95)*

(31) The interim Constitutional arrangements with the States to be flexible and small States to be grouped together. (Paras. 96 and 97)*

* Reference to paras. are to paras. in the original reports.

Conclusion

101. Some of our recommendations would need to be emodied in the Constitution while others would be given effect to by the order of the President. We have attempted a draft of the necessary provisions in the Constitution to give effect to the former; and these are set out in Appendix VI.*

102. Mr. Rangachari has signed this report in his personal capacity, and the views expressed in it should not be treated as committing in any manner the Ministry of Finance of which he is an officer.

NALINI RANJAN SARKER,
V. S. SUNDARAM,
M. V. RANGACHARI.

New Delhi:
5th December 1947.

* Reference to paras. are to paras. in the original reports.

APPENDIX B

CONSTITUTIONAL POSITION OF THE CENTRE AND THE PROVINCES IN RESPECT OF REVENUE UNDER THE GOVERNMENT OF INDIA ACT, 1935

(a) Revenues of the Federation

(1) From Taxes

A. Levied and collected by the Federation but belonging wholly to the Provinces or Units.

1. Duties on Sucession to property other than agricultural land.*
2. Stamp Duties on Bills of Exchange, Cheques, Pronotes, Bills of Lading, Letters of Credit, Policies of Insurance, Proxies and Receipts.†
3. Terminal Taxes on goods or passengers carried by Railway or air. ‡
4. Taxes on Railway fares and freights.* (Subject to the right of the Federation to raise Federal Revenue by a surcharge on all the items in this list.)

B. Levied and collected by the Federal Government of which a portion is or may be assigned to the provinces

a. Assigned by the Act.

1. Income-tax other than Corporation Tax. (Subject to Federal Suroharge)¶
2. Jute Export Duty.¶

b. May be assigned by Federal Law.

1. Duty on Calt.
2. Other duties of Excise on Tobacco and on other Goods manufactured or produced in India except

(*a*) alcoholic liquor for human consumption.
(*b*) Opium, hemp, and other narcotics and non narcotic drugs.
(*c*) medicinal and toilet preparations.¶"

3. Duties of Export.¶"

C. Levied and collected by Federation and, belonging wholly to the Federation.

1. Taxes in Lists A & B in areas administered by the Federal Government.
2. Customs.
3. Corporation Tax.
4. Surcharges mentioned in Lists A & B.
5. Taxes on capital values of assets of individuals and companies.
6. Miscellaneous receipts from fees in respect of matters in Federal List (includnig fees taken in the Federal Court.)

(2) From Commercial Operations.

1. Posts & Telegraph.
2. Federal Railways.
3. Banking.
4. Other Commercial Operations.

(3) Sovereign Functions.

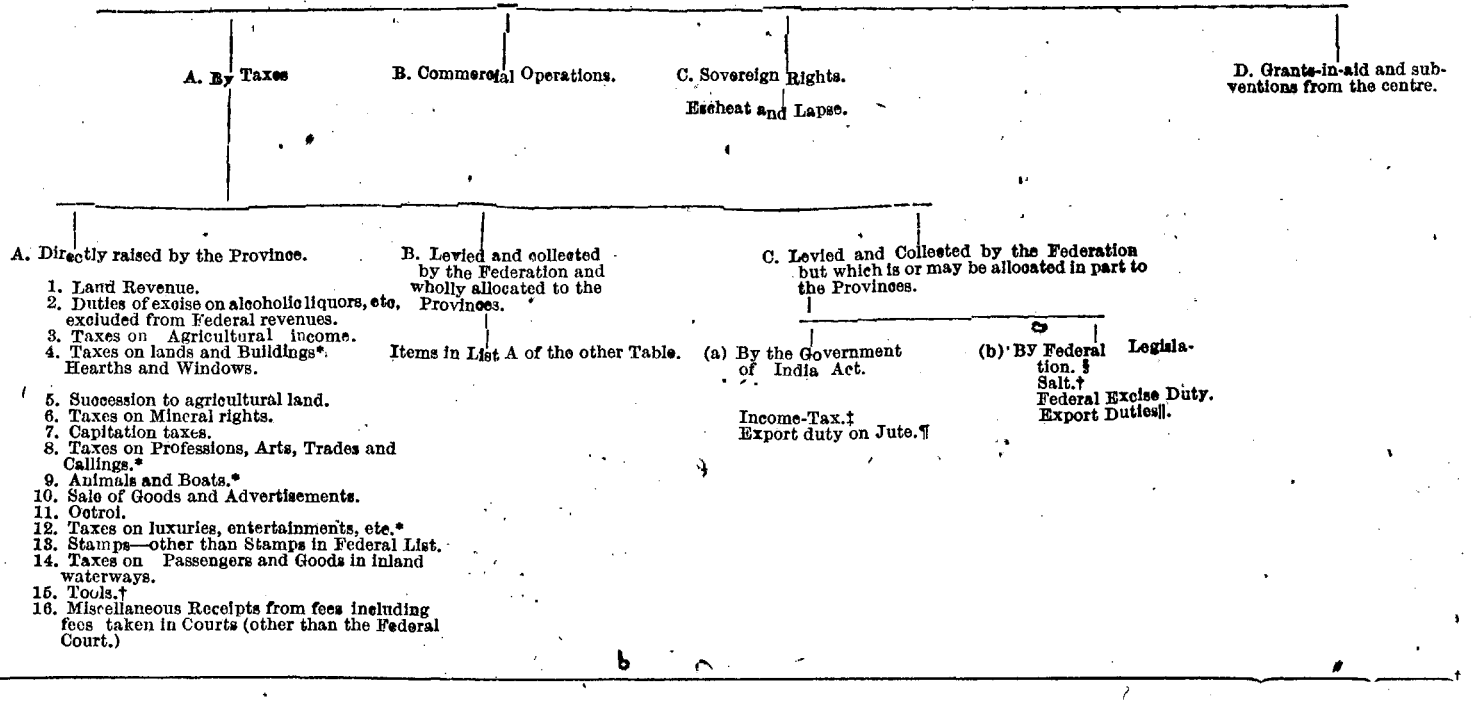
1. Coinage and Currency.
2. Escheat and lapse in areas administered by Federal Government.

(4) Contributions from States—Assigned by His Majesty.

Tributes and other payments.

* Not yet levied.
† These duties continue to be both levied and collected by the Provinces.
‡ Levied so far only for the benefit of local bodies.
§ Duty now abolished.
‖ See notes under the other Table.
¶ No share assigned to Provinces.

(b) Revenues of the Province



* These taxes are now raised by Municipal and other Local authorities for their needs. † Now abolished—but before abolition was a source of Municipal Taxation.
‡ By order in Council 50% of the net proceeds of tax on income other than Corporation tax exclusive of proceeds attributable to Chief Commissioners Provinces and taxes in respect of Federal emoluments are distributable in accordance with a prescribed ratio.
¶ 62½ assigned to Provinces by Order in Council distributed among jute producing Provinces in proportion to the respective amounts of Jute grown in them.
§ Duty abolished. ‖ No share allotted to Provinces.

[Annexure II]

APPENDIX B

FINANCIAL POSITION OF THE PROVINCES AND THE CENTRE FROM 1937-38 TO 1946-47

(a) Provinces

(In lakhs of Rupees)

Province	Provincial Revenue	Devolution Grants from the Centre including Dev. Grants.	Total Revenue	Total Revenue Expenditure	Cumulative Deficit(—) Surplus(+)	Balances in Reserve Funds on 31st Mar. 1947	Closing balance on 31st Mar. 1947
Madras	2,68,27	24,12	2,87,39	2,84,22	+ 3,17	29,18	56
Bombay	1,92,52	26,51	2,19,03	2,06,69	+ 12,34	17,07	42
Bengal	1,65,35*	69,92	2,35,27	2,51,13*	—15,86	25	2,48
United Provinces	1,79,33	26,77	2,06,10	2,04,99	+1,11	17,31	6,43
Punjab	1,84,12	11,51	1,95,63	1,60,46	+35,17	6,79	57
Bihar	75,06	15,10	90,16	81,81	+8,35	7,78	1,07
C. P. & Berar	63,61	7,69	71,30	70,661	+ 64	8,14	2,41
Assam	35,54	7,89	43,43	42,89	+ 54	1,02	1,54
N-W. F. P.	11,94	11,55	23,49	22,95	+ 54	15	63
Orissa	17,71	7,93	25,64	25,11	+ 53	10	60
Sind	55,19	10,27†	65,46	60,04	+5,42	8,14	8

*Subsidy of 3,00 in 1943-44 taken by Bengal as reduction of Expenditure on Famine. Hence Revenue and Expenditure both have been increased by 3,00.

†The subvention was capitalised on 1st April 1944 and the value set off against the Lloyd Barrage Debt.

Revised Estimates have generally been taken for 1946-47.

(b) Central Government (1937 38 to 1649-47)

(In lakhs of Rupees)

Year	Revenue	Expenditure			Deficit(—) Surplus(+)
		Civil	Defence	Total	
1937-38	86,61	39,39	47,22	86,61	..
1938-39	84,52	38,97	46,18	85,15	—63
1939-40	94,57	45,03	49,54	94,57	..
1940-41	1,07,65	40,57	73,61	1,14,18	—6,53
1941-42	1,34,57	43,33	1,03,93	1,47,26	—12,69
1942-43	1,77,12	74,28	2,14,62	2,88,90	—1,11,78
1943-44	2,49.95	81,44	3,58,40	4,39,84	—1,89,89
1944-45	3,35,71	1,00,77	3,95,49	4,96,26	—1,60,55
1945-46	3,61,18	1,24,38	3,60,23	4,84,61	—1,23,43
1946-47 (Revised Estimate)	3,36,19	1,43,36	2,38,11	3,81,47	—45,28
TOTAL	19,68,07	7,31,52	18,87,33	26,18,85	—6,50,78

The amounts included in the above on account of revenue assigned to the Provinces and Grants-in-Aid and Subventions to them are given below :—

(In lakhs of Rupees)

Year	Share of Jute Export Duty	Share of Income-tax	Grants-in-aid and Subventions
1937-38	2,65	1,25	3,14
1938-39	2,51	1,50	3,05
1939-40	2,56	2,79	3,04
1940-41	1,85	4,16	3,04
1941-42	1,95	7,39	3,03
1942-43	1,40	10,90	2,76
1943-44	1,38	19,50	5,75(*a*)
1944-45	1,49	26,56	8,70(*b*)
1945-46	1,57	28,75	9,70(*c*)
1946-47 (Revised estimate)	2,80	29,87	1,70
TOTAL	20,16	1,32,67	43,91(*d*)

(*a*) Includes 3,00 Special Grant to Bengal. (*b*) Includes 7,00 Special Grant to Bengal.

(*c*) Includes 8,00 Special Grant to Bengal. (*d*) Includes 7 roundly in all for Coorg.

[Annexure III]

APPENDIX B

SUMMARY OF PROVINCIAL SUGGESTIONS

Part I—Taxes

Tax	Assignment existing or contemplated	Provinces proposing	Assignment proposed for provinces
1	2	3	4
1. Income tax (other than on agricultural income). [Sec. 138 of the Government of India Act, 1935 and item 54 in Federal Legislative List.]	A maximum of 50 % of the net proceeds to be distributed among provinces.	Madras	A minimum of 50% of net proceeds.
		Bombay	75% of income tax and corporation tax receipts for provinces or 75% of the corporation, income and super taxes paid by residents in a province to be earmarked for that province. From the divisible pool from corporation and income tax 33⅓% should be allotted to Bombay which is the largest single contributor to the revenue.
		U. P.	50% for provinces on population basis.
		C. P.	75%. Tax on Agricultural income also should be collected by centre.
		West Bengal	60% to be distributed in proportion to the collection of these taxes in provinces.
		Bihar	Even on the basis of population Bihar should have received 17 crores as against 13 allotted. In future none of the poorer provinces should get an amount lower that that payable on the basis of population. The distribution should be governed not by residence of the assessees but by the place where the income is earned. The basic factors must be population and the place where the income is earned. If any modifications are to be made they must be done with the object of assisting the financially poorer provinces among which Bihar is at the very bottom.
		Orissa	Distribution of 50% may continue as at present ; but the percentages should be revised taking into consideration the factor also of the state of development in addition to those of population and residence used by Sir Otto. Due weightage to be given to undeveloped provinces. Should the provincial share exceed 12 crores, 75% of the exceeds may be left to the discretion of the Central Government.

Tax	Assignment existing or contemplated	Provinces proposing	Assignment proposed for provinces
1	2	3	4
		East Punjab	After the partition the East Punjab Province faces a deficit of about 3 crores : its share of income tax proceeds should be very appreciably increased to meet the deficit fully.
		Assam .	75 % There should be a drastic revision of the shares of provinces in income tax receipts, having regard to the facts that Sind and N.W.F.P. go out that the amounts now available in the divisible pool have enormously exceeded the original estimate and some provinces are now getting, as a result income tax amounts exceeding the entire revenues of some others.
2. Corporation Tax. (Items 46 in Federal Leg. List)	Wholly Federal .	Madras .	At least 50% of the net proceed to go to provinces.
		Bombay .	75% for provinces..
		U. P. .	50% for provinces on population basis.
		C. P. . .	C.P. suggests the inclusion of Corporation tax and taxes on Capital and Capital Assets in taxes on income for distribution.
3. Central Excise duties (on tobacco and other goods except alcoholic liquors.(item 46)	There is provision for sharing in full for in part [Sec. 140 (1)] but not so far shared.	Madras . Bombay	Should be entirely provincialized. Should be provincialized or not less than 50% of the net proceeds in each producing unit to be allotted to that unit.
		U. P. .	Should be entirely provincialized and distributed on population basis.
		C. P. . .	Should be provincialized or 75% should be allotted to provinces. The duty should cover some more articles such as rubber goods, papers, etc.
		West Bengal	25% of the federal excise should be allocated to provinces.
		Bihar .	A portion of the duty should be distributed on the basis of the yields in different Provinces.
		Orissa .	A portion may be distributed to provinces gradually particularly as the provinces are now faced with the loss of their excise revenue.
		Assam ..	At least 75 per cent of the excise duty collected on her oil should be allotted to Assam. At least 50 per cent of the other excise duties (Sugar, Steel, Matches, Tobacco and Beetle Nuts) to be given to the producing units on a

Tax	Assignment existing or contemplated	Provinces proposing	Assignment proposed for provinces
1	2	3	4
			formula combining factors of province of production, size of population and level of revenue expenditure.
4. Export Duties on Jute and Jute products.	62½ per cent of net proceeds. [Section 140 (2)]	West Bengal	75 per cent. should accrue to the provinces growing and manufacturing jute.
		Bihar	The entire net proceeds of the jute producing provinces should be distributed proportionately among the concerned provinces.
Export Duties	..	Madras	At least 50 per cent of net proceeds of all export duties should be distributed to provinces according to principles formulated by Federal Legislature. Analogy of jute duty arrangement cited.
		Bombay	50 per cent of net proceeds.
		U. P.	All export duties should be entirely provincialized and distributed on population basis.
		C. P.	Export duty on minerals (Coal and Manganese, etc.), should be allotted to C. P. (Jute analogy).
		West Bengal	25 per cent. of net proceeds of export duties other than jute.
		Orissa	A portion may be distributed to provinces gradually particularly as the provinces are now faced with the loss of their excise revenue.
		Assam	At least 75 per cent of the sale proceeds of export duty realised on her tea.
6. Succession duties, Federal Stamp duties, Terminal Taxes (Railway & Air), Taxes on Railway Fares & Freights.	Provided for full distribution to provinces. (Sec. 137)	Madras	It should be provided that the net proceeds shall not form part of the Revenues of the Federation but shall be distributed to the provinces according to principles formulated by the Federation.
		U. P.	The provisions should be fully utilized to augment the resources of provinces.
		C. P.	Succession duties in respect also of agricultural land should be transferred from the provincial to the Federal list. The duty should be on *ad valorem* basis.
		West Bengal	The provincial governments should be empowered to levy them if the Central Government do not levy them.

Tax	Assignment existing or contemplated	Provinces Proposing	Assignment proposed for provinces
1	2	3	4
		Assam	50 per cent of income from increase in railway fares and freights above the levels determined by the Railway Budget of February 1947 to go to provinces on population ratios weighted by a given factor in favour of provinces with smaller revenues and expenditure.
7. State Lotteries	Federal (item 48 Federal List).	C. P.	Should be transferred to Provincial list.
8. Taxes on trades, professions, callings and employment.	Provincial tax, Sec. 142-A, Item 46 in Provincial list.		The limit of Rs. 50 p.a. should be removed and gradation according to capacity should be provided for.
9. Taxes on sales and advertisements.	(Item 48 in Provincial list).		Sales tax should be levied in all provinces and acceding states.

Part II—Non-tax Proposals

Tax	Assignment existing or contemplated	Porvinces proposing	Assignment proposed for provinces
1	2	3	4
		U. P.	(1) The inequity of the Niemeyer Award should be rectified and the central allocation for U. P. should aim at a minimum of 6 or 7 crores p.a. going up to 12 or 13 crores in the space of 10 years. (2) The consolidated debt due from the U. P. to the Government of India should be wiped off. (3) The Government of Ind should share losses on the food grains scheme as originally promised by them.
		C. P.	A system of central grants derived after taking into account such factors as natur resources, stage of industri a development, taxable cap city, etc., is essential. A n expert financial enquiry should be undertaken.
		West Bengal	(1) Provision for federal aid to provinces for social and amelioration work. (2) There should be a financ commission on the lines o f the Commonwealth Grants Commission in Australia.
		Bihar	If any grants-in-aid or sub ventions are given in futur the *per capita* revenue an expenditure in each provinc e during the last ten years should be kept in mind. Thos with low *per capita* revenu e and expenditure shou be given greater assista than the richer.

Tax	Assignment existing or contemplated	Provinces proposing	Assignment proposed for provinces
1	2	3	4
		Orissa . .	The broad lines of the present allocation may be maintained in the new Constitution ; but the subvention of 40 lakhs fixed for the province should be increased ; it should be stated as a percentage of the revenues of the central government and in any case there should be a minimum annual subvention of 150 lakhs. Enforcement of the policy of prohibition and judicial panchayats will make the provincial administration impossible unless the Central Government multiplies its grants and subventions very liberally. Abolition of the Zamindari system would seriously affect Land revenue and stamps. Make every one pay according to his capacity. Provide for a well regularised house tax on a provincial scale ; a tax on passengers. Nationalization of industry will wash away the the twin anchor sheets of Central finance— Income tax and Customs.
		East Punjab	(1) Particularly as the East Punjab is now to be the frontier of the Indian Dominion, there is a strong case for a recurring subvention of more than 1 crore for it (N. W. F. P. used to get 1 crore). (2) A non-recurring subvention for the capital of the province. (Orissa was given such a grant.
		Assam .	There is an obvious case for an upward revision of the subventions granted to Orissa and Assam. Assam as a frontier as well as a backward province of India deserves special treatment. Its royalty of 5 per cent on oil (as against 10 times that amount of central excise) is unfair. Large amounts of income accrue in Assam but are assessed in Calcutta which is headquarters of the concerned companies. Some provinces like Bombay and Bengal have been allowed to get a large share of increase tax receipts because of their claim to be territorially responsible for the production of the incomes. Assam is entitled to similar consideration in regard to certain items of central revenues.

[Annexure IV] APPENDIX B

RIGHTS AND IMMUNITIES ENJOYED BY THE STATES

(A) Annual value of the immunities enjoyed by the States under Sea Customs, Currency and Coinage

State	Year to which the figures relate	Rs. in lakhs	Remarks (see footnote)
(i) Sea Customs			
Kutch	1945-46	21·18	(1)
Bhavnagar	Do.	·19	(2)
Morvi	Do.	6·80	(3)
Junagadh (excluding Mangrol)	Do.	12·65	(3)
Nawanagar	Do.	15·27	(3)
Porbandar	Do.	3·63	(3)
Cambay	Do.	2·00	(4)
Baroda	1943-44	22·98	(5)
Janjira	1945-46	3·00	(6)
Cochin	1944-45	22·70	(7)
Travancore	Do.	17·99	(7)
Sawantwadi	Do.	0·12	(8)
Mangrol	Do.	2·33	(9)
Kashmir	1945-46	11·00	(10)
(ii) Currency and Coinage			
Hyderabad	1945-46	105·55	

(6th October 1945—5th October 1946)

(1) In connection with Federation, the proposed method of calculating the immunity in the case of Kutch was as follows :—

To the trade figures supplied by the State the British Indian tariff rates should be applied and from this total should be deducted the difference between the duty calculated at British Indian tariff rates and that actually collected at State rates on goods not consumed in the State itself.

As the figures necessary to apply this formula are not available the figure given in the statement represents simply the amounts of customs duty retained by the State in 1945-46.

(2) The value of the immunity in the case of Bhavnagar is the total of customs collections made and retained by the State. The figures for 1945-46 is abnormal.

The figures for 1930-31 to 1935-36 were as follows :—

Year	Rs.
1930-31	51,02,974
1931-32	75,91,016
1932-33	81,93,368
1933-34	99,32,628
1934-35	1,21,55,668
1935-36	61,62,300

(B) Note prepared by the Ministry of States on excise arrangements with Indian States

Matches.—In respect of match excise there is a pooling arrangement with the States. The main principle is that the whole of the proceeds of the tax collected in any State are made over to the general pool and the whole proceeds of the pool divided between British India on the one hand and the various States that agree to come into the pool on the other on the basis of population, regardless of whether matches are manufactured or not, in the States. Import of matches from the States that have not joined this arrangement, is prohibited. The conditions that a State is required to accept for admission to the pool are—

(a) The State should levy duty on matches produced in their territories by means of British Indian banderols and pay the proceeds into the common pool.

(b) The British Indian procedure for the levy and collection of duty should be followed.

Licence fees and fines are not included in the pool. Deduction on account of collection-charges at a uniform rate is allowed. The present rate is 3 per cent of the net collections. The total net revenue is distributed among the various States and British India on the basis of population. While the amount contributed by States during 1944-45 to the pool was Rs. 44,38,970 the amount actually paid to the States was Rs. 1,00,66,875. The British Indian realisation was Rs. 5,46,26,781.

* * * * * *

3. **Sugar.**—Arrangements were made in 1934 with the sugar producing States whereby they were required to levy the same rates of excise and under

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(3) The value of the immunity in these cases is represented by the total customs collections less the amount payable to the Central Government under the Agreements.

(4) By the agreement of 1938 Cambay is allowed to retain whichever is greater of the following two amounts :—

(i) Rs. 2 lakhs; or

(ii) a proportion of the customs duties collected at the State ports on the basis of population with suitable adjustments to correct difference between the proportion of the urban population to the rural population in the state and the whole of India respectively.

Since the net customs revenue collected by the State during 1945-46 was only Rs. 6,993/- the State was entitled to receive from the Central Government difference between that figure and Rs. 2 lakhs. The immunity in this case is therefore Rs. 2 lakhs.

(5) Baroda is entitled to retain all the duty collected by it up to a maximum of 1 per cent. of the average customs revenue of British India and until this maximum is reached. the immunity is represented by the State's collections. The latest figures available are given here.

(6) Annual payment under the 1940 Agreement, which represents the State's immunity.

(7) The immunity of Travancore and Cochin is represented by their share of the pool reduced by the collection of duty at the British port of Cochin, at Cochin ports and Travancore backwaters. In addition it is necessary to include for Travancore the annual collections of customs duty at their ports other than the backwater ports; and in respect of commodities such as tobacco, on which Travancore levies duty at rates other than British Indian rates, the amount of duty at those rates is substituted for the actual collections.

(8) The immunity is represented by the compensation payment of Rs. 13,433 less Rs. 1,700 allotted for abolition of land-customs under the Agreement of 1838.

(9) Actual amount collected and retained by the State.

(10) Drawback from customs on goods imported by sea through British India.

the same conditions as in force in British India in return for which sugar produced in Indian States was to be admitted free to British India. Soon after the outbreak of war, arrangements were made with the major sugar producing States, whereby in addition to compliance with the 1934 arrangements, these States undertook to hand over to the Central Government the excess of their earnings from sugar excise in any year above the highest revenue derived from the sugar excise in any of the three years preceding 1939-40. As regards States which had not till the developed a degree of production materially in excess of their own consumption and States which had not commenced production, the Residents were asked to watch and report developments. All producing States were, however, requested to levy the same duty as in British India. In the case of such States where production now exceeds consumption, the arrangement is that the State retains duty on the basis of population at the rate of Rs. 3/20 per capita revenue.

The sugar producing States are—

A	B
Mysore	Baroda
Phaltan	Hyderabad
Kolhapur	Udaipur
Kapurthala	Gwalior
Rampur	Aundh
Jaora	Nabha
Bhopal	Kashmir
Sangli	
Miraj	

The States falling in category A above produce sugar in excess of their requirements and those falling in category B less than their requirements. Of the first mentioned States, negotiations were satisfactorily concluded with the first five. Bhopal which is surrounded on three sides and Jaora which is surrounded on all sides by Indian States, taking full advantage of their geographical position did not accept the settlement at first. Jaora, however, agreed to surrender its surplus revenue from 1942-43. Sangli and Miraj States only recently developed their sugar factories and have agreed to surrender the surplus revenue on the basis of the formula at 'A' above but have protested for revision of the arbitrary figure of actual consumption represented by 3/20ths. The matter is under consideration.

The amount retainable by Indian States and the average duty collected are as follows:—

Name of State	Amount retainable	Average collection
	Rs.	(Rs. in lakhs)
Mysore	12,91,135	17
Kapurthala	2,52,000	8
Kolhapur	2,33,592	4
Rampur	11,43,532	16
Phaltan	5,21,262	
Sangli	44,007	Not known.
Miraj	6,944	Not known.

Following is the contribution by the above States to the Central Exchequer in respect of the year 1945-46—

	Rs.
Mysore	..
Kapurthala	6,47,368
Kolhapur	2,26,820
Rampur	..
Phaltan	1,40,585
Sangli	1,07,869
Miraj	59,268

Information regarding the amount to be surrendered by Mysore and Rampur is still awaited.

* * * * * *

7. **Tobacco.**—All States are expected to levy the British Indian rate of duty. (Some States where production is not of much consequence levy excise on the basis of acreage in view of the high cost of administration.) The States are entitled to retain the proceeds of the excise duty subject to the limit, on the basis of their population, worked out in accordance with the following formula—

$$A = \frac{R \times p}{P}$$

Where A is the limit retainable by a State;

R = the total net revenue in any year calculated from 1st April to 31st March, collected in British India and all the participating States (i.e., the gross revenue less the cost of collection, licence fees, penalties, fines etc.);

p = the population of the State concerned;

P = the population of British India and all the participating States.

Some States have not come into the scheme and the tobacco of such States on entry into British India is confiscated and released on payment of fine and penalty. Although section 5 of the Central Excises and Salt Act 1944 empowers us to impose customs duty equivalent to the excise duty, the provisions of this section have not been involved because it has been possible to realise an amount equivalent to the excise duty on State Tobacco under rule 32 of the Central Excise Rules by means of confiscation. Hyderabad has not accepted the formula and does not share the revenue with the Government of India although it has legislated on the lines of British India. No restrictions have been imposed on the entry of Hyderabad Tobacco into British India.

To facilitate movement of tobacco from and to the States, a special procedure for the movement in bond has been devised. Under this procedure the duty is realised at destination and credited to a Suspense account. The amounts realised on the State tobacco is at the end of the year credited to the State and is taken into account in the State's realisations for purposes of the formula. The revenue contributable by the States during the years 1943-44 and 1944-45 were Rs. 51,38,809 and Rs. 1,48,07,552 respectively.

8. **Vegetable Product.**—The formula is the same as in respect of tobacco. The only States concerned at present are Mysore and Cochin although the other States were asked to legislate and have legislated on the matter. Of the two States, namely, Cochin and Mysore, Cochin's contribution to the Central Revenues during the year 1943-44 and 1944-45 was Rs. 76,160 and Rs. 41,212 respectively. The Mysore State has nothing to pay under the formula.

9. **Tea, Coffee and Betel Nuts.**—The States concerned are:—

Tea:—Mysore, Travancore, Cochin, Tripura, Mandi;

Coffee:—Mysore, Travancore, Cochin;

Betel Nuts:—Mysore, Travancore, Cochin, Tripura; Sawantwadi and Janjira.

The rates of duty imposed by Travancore are as follows:—

Betel Nut	As. 1/6 per lb.
Coffee	,, -/6 ,, ,,
Tea	,, 1/9 ,, ,,

The same formula as in respect of tobacco has been adopted in respect of these excises also, although the Board's intention was that 'P' in respect of these excises should denote the population of all India and not limited to participating States and British India as in the case of tobacco. Mysore and Travancore, the two important States, have been clamouring for a revision of the formula. In the case of Travancore the following revised formula has been offered:—

$$A = \frac{P}{T}$$

Where A denotes per capita consumption figure;

T = the total quantity of the article taxed in British India and in other participating units;

P = the total population of British India and other participating States.

On the basis of the per capita consumption figure worked out, the amount retainable by the State will be worked on the basis of the following formula:—

$$A = a \times d \times p$$

Where A = amount retainable by the State;

a = per capital consumption figure of British India and the participating units;

d = rate of excise duty levied by the State;

p = Population of Travancore.

The excess over 'A' plus cost of collection will have to be surrendered by the State. The State's acceptance of the formula has not yet been received.

In the case of Mysore, we have agreed in respect of coffee that the amount retainable by the State may be determined on the basis of the Coffee Controller's statistics of coffee consumption in the State. Mysore has accepted this formula and is pressing for a similar formula in respect of betel nuts. After a recent tour, the Board has stated that after the establishment of the Betel Nut Marketing Board, it may be possible to adopt the coffee formula in respect of betel nuts also.

(C) Statement showing the value of service postage stamps supplied annually free to States

S. No.	Name of State	Value
		Rs.
1	Alwar	30,000
2	Baroda	1,25,000
3	Bharatpur	12,000
4	Bhopal	8,380
5	Bikaner	37,000
6	Bushahr	600

S. No.	Name of State	Value
		Rs.
7	Cooch Behar	9,000
8	Datia	5,000
9	Dhar	3,000
10	Faridkot	1,000
11	Gwalior	480
12	Idar	550
13	Indore	35,000
14	Jhalawar	2,400
15	Jubbal	250
16	Kalsia	450
17	Kashmir	20,000
18	Kotah	15,000
19	Loharu	300
20	Malerkotla	900
21	Mandi	700
22	Marwar	39,000
23	Panna	900
24	Sikkim	1,500
25	Sirmoor	1,275
26	Suket	700

(D) Statement showing the values of immunities granted annually to Indian States in the shape of free conveyance of their official correspondence within the State limits

Name of the State	Value of the immunity	Remarks
	Rs.	
(1) Mysore	21,38,182	
(2) Hyderabad	5,440	Combined figures for the portions of the State in the Madras and Bombay Circles.
(3) Banganapalle	365	
(4) Pudukottai	37,960	
(5) Baroda	14,705	
(6) Bhor	68	
(7) Jawhar	3,627	
(8) Bhopal	49,177	
(9) Rewah	1,72,380	

(E) Statement showing the amounts of telephone revenue accruing in India on behalf of Indian States and *vice versa*

Amount of revenue accruing in India on behalf of States

	1944-45	1945-46	1946-47
	Rs.	Rs.	Rs.
1. Kashmir	1,912 3 0	2,731 3 0	1,646 13 0
2. Jammu Tawi	3,880 0 0	4,475 5 0	4,005 4 0

Amount of revenue accruing in States on behalf of India

	1944-45	1945-46	1946-47
	Rs.	Rs.	Rs.
r	1,702 5 0	2,375 1 0	1,187 7 0
Tawi	3,608 1 0	4,133 12 0	1,501 3 0

APPENDIX B

[Annexure V]

STATEMENT SHOWING REVENUE AND THE PERCENTAGE OF LAND CUSTOMS INCLUDED IN THE REVENUE OF CERTAIN STATES

(In lakhs of Rupees)

S. No.	Name of State	Total Revenue (Ordinary)	Land Customs	Percentage	Remarks
1	2	3	4	5	6
1	Hyderabad	943	124	13·2	
2	Travancore	611	89	14·6	
3	Kashmir	557	117	21·0	
4	Gwalior	303	41	13·5	
5	Jaipur	197	23	11·6	
6	Baroda	434	20*	4·6	*Includes Sea Customs, figures of which are not separately available.
7	Jodhpur	224	40	17·8	
8	Udaipur (Mewar)	81	1	1·3	
9	Indore	305	27	8·9	
10	Bikaner	252	29	11·5	
11	Alwar	90	44	48·9	
12	Bhopal	124	20	16·1	
13	Kotah	48	6	12·5	
14	Tehri-Garhwal	23	4†	17·4	†Includes Excise also.
15	Bharatpur	65	23	35·4	
16	Cutch	89	1	1·1	
17	Patna	30	6	20·0	
18	Sarguja	17	5	29·4	
19	Nawanagar	110	19‡	17·3	‡Includes Sea Customs, figures of which are not separately available.
20	Tonk	34	11	32·3	
21	Bundi	29	8	27·6	
22	Sirohi	21	4	19·0	
23	Dungarpur	22	8	36·4	
24	Banswara	13	3	23·1	
25	Partabgarh	8	3	37·5	
26	Jhalawar	7	1	14·3	
27	Jaiselmer	6	3	50·0	
28	Shahpura	4	1	25·0	
29	Danta	3	1	33·3	
30	Paladpur	28	5	17·9	
31	Idar	45	17	37·8	
32	Balasinor	5	1	20·0	
33	Lunawada	10	2	20·0	
34	Sant	12	2	16·7	
35	Chhota Udaipur	24	2	8·3	
36	Radhanpur	23	4	17·4	
37	Baria	18	1	5·6	
38	Dewas (Junior)	23	4	17·4	
39	Panna	10	1§	10·0	§Includes Tributes &c.
40	Rattam	17	6	35·3	
41	Alirajpur	6	1‖	16·7	‖Includes Sayar.
42	Bijawar	7	1¶	14·3	¶Includes Biyai.
43	Chhatarpur	4	2	40·0	
44	Barwani	12	2	16·6	
45	Jaora	22	3	13·6	
46	Rajgarh	12	1	8·3	
47	Sailana	6	1	16·6	
48	Jhabua	13	4	30·8	

[Annexure VI] APPENDIX B

AMENDMENTS RECOMMENDED IN THE DRAFT CONSTITUTION

Provisions relating to procedure in financial matters

Clause 75.—To clause 75 add the following, namely:—

"(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under Section 74, and when it is presented to the President for assent under section 76, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill."

Clause 79.—In sub-clause (3) of clause 79, for the words "succeeding section" *substitute* the words "two succeeding sections".

New clause 80-A.—After clause 80, *insert* the following new clause namely—

"80-A. *Excess grants.*—If in any financial year expenditure from the revenues of the Federation has been incurred on any service for which the vote of the House of the People is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the House of the People and the provisions of sections 78 and 79 shall have effect in relation to such demand as they have effect in relation to a demand for a grant."

Clause 145.—For sub-clause (1) of clause 145, *substitute* the following namely:—

"(1) Subject to the special provisions of this Part of this Constitution with respect to Money Bills, a Bill may originate in either House of the Legislature of a Province which has a Legislative Council.

(1a) Subject to the provisions of sections 146 and 146-A, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a Province having a Legislative Council unless it has been agreed to by both Houses either without amendments or with such amendments only as are agreed to by both Houses."

Clause 146.—For clause 146, *substitute* the following, namely:—

"146. Passing of Bills other than Money Bills In Provinces having Legislative Councils.—(1) If a Bill which has been passed by the Legislative Assembly of a Province having a Legislative Council and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Houses to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this section shall apply to a Money Bill.

(2) If at a joint sitting of the two Houses summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting:—

(a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendments shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed in the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed, and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final."

New clauses 146-A and 146-B.—After clause 146, *insert* the following clauses, namely:—

"146-A. Special provisions in respect of Money Bills.—(1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a Province having a Legislative Council it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of thirty days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly, and if the Legislative Assembly does not accept any of the recommendations of the Legislative Council, it shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the Amendments recommended by the Legislative Council.

(4) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period of thirty days in the form in which it was passed by the Legislative Assembly.

146-B. Definition of "Money Bill".—(1) For the purposes of this Chapter, a Bill shall be deemed to be a money Bill if it makes provision—

(a) for imposing or increasing any tax; or

(b) for regulating the borrowing of money or the giving of any guarantee by the Province or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Province; or

(c) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure.

(2) A Bill shall not be deemed to be a Money by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition or increase of any tax by any local authority of body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the Legislative Assembly thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under section 146-A after it has been passed by the Legislative Assembly, and when it is presented to the Governor for assent under section 147, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill".

Clause 148.—In the proviso to clause 148, after the words "Provided that" *insert* the words "if the Bill is not a Money Bill".

Clause 151.—In the sub-clause (3) of clause 151, for the words "succeeding section" *substitute* the words "two succeeding sections."

New Clause 152-A.—After clause 152, *insert* the following clause namely:—

"152-A. Excess grants.—If in any financial year expenditure from the revenues of the Province has been incurred on any service for which the vote of the Legislative Assembly is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the Assembly and the provisions of sections 150 and 151 shall have effect in relation to such demand as they have effect in relation to a demand for a grant."

Clause 153.—For clause 153, *substitute* the following clause, namely:—

"153. Special provisions as to financial Bills.—(1) A Money Bill or an amendment thereto shall not be introduced or moved except on the recommendation of the Governor.

(2) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province shall not be passed by a House of the Provincial Legislature unless the Governor has recommended to that House the consideration of the Bill."

Provisions relating to the Auditor-General of the Province

Clause 174.—For sub-clause (3) of clause 174, *substitute* the following namely:—

"(3) The Auditor-General of a Province shall be eligible for appointment as Auditor-General of the Federation or as Auditor-General of any other Province but not for any other appointment either under the Federation or under the Government of a unit after he has ceased to hold his office."

Provisions relating to distribution of revenues between the Federation and units and miscellaneous Financial provisions

Clause 194-A.—For clause 194-A *substitute* the following, namely:—

"194-A. Interpretation.—In this Part—

(a) 'Finance Commission' means the Finance Commission constituted under Section 202-A of this Constitution;

(b) 'unit' does not include a Chief Commissioner's Province."

Clauses 196 to 199.—For clause 196 to 199, *substitute* the following, namely:—

"196. Certain succession duties.—(1) Duties in respect of succession to property other than agricultural land and estate duty in respect of property other than agricultural land shall be levied and collected by the Federation, but sixty per cent or such higher percentage as may be prescribed of the net proceeds in any financial year of any such duty, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that duty is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

(2) If any dispute arises as to the distribution of the net proceeds of any such duty among the units, it shall be referred for decision to such authority as may be appointed in this behalf by the President and the decision of such authority shall be final.

196-A. Certain terminal taxes.—Terminal taxes on goods or passenger carried by railway or air shall be levied and collected by the Federation, but the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

196-B. Certain stamp duties.—Such stamp duties as are mentioned in the Federal Legislative List shall be levied by the Federation and collected, in the case where such duties are leviable within any Chief Commissioner's Province, by the Federation and in other cases, by the units within which such duties are respectively leviable, but the proceeds in any financial year of any such duty leviable in that year within any unit shall not form part of the revenues of the Federation, but shall be assigned to that unit.

197. Taxes on Income.—(1) Taxes on income other than agricultural income shall be levied and collected by the Federation, but sixty per cent or such higher percentage as may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in such manner as may be prescribed:

Provided that the Federal Parliament may, at any time, increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

(2) In this section, "taxes on income" includes any sum levied by the Federation in lieu of any tax on income but does not include any contributions levied by the Federation in respect of its own undertakings.

198. Salt duties and excise duties.—(1) No duties on salt shall be levied by the Federation.

(2) Federal duties of excise shall be levied and collected by the Federation, but, if an Act of the Federal Parliament so provides, there shall be paid out of the revenues of the Federation to the units to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the units in accordance with such principles of distribution as may be prescribed:

Provided that fifty per cent or such higher percentage as may be prescribed, of the net proceeds in any financial year of the excise duty on tobacco, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation but shall be assigned to the units within which that duty is leviable in that year, and shall be distributed among the units in such manner as may be prescribed.

198-A. Taxes not enumerated in any of the lists in the Ninth Schedule.—If any tax not mentioned in any of the lists in the Ninth Schedule to this Constitution is imposed by Act of the Federal Parliament by virtue of entry 90 of the Federal Legislative List, such tax shall be levied and collected by the Federation but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

198-B. Grants in lieu of jute export duty.—Until the abolition of the export duty levied by the Federation on jute or jute products or the expiration of ten years from the commencement of this Constitution, whichever is earlier, there shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of the Provinces mentioned below the sums respectively specified against those Provinces:

Province	*Sum*
West Bengal	100 lakhs of rupees.
Bihar	17 lakhs of rupees.
Assam	15 lakhs of rupees.
Orissa	3 lakhs of rupees.

199. Grants from Federation to certain units.—Such sums as the President may, on the recommendation of the Finance Commission, by order fix shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of such units as the President may on such recommendation determine to be in need of assistance, and different sums may be fixed for different units:

Provided that there shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of the Provinces of Assam and Orissa the sums of thirty and forty lakhs of rupees respectively or such higher sums as the President may on the recommendation of the Finance Commission fix in respect of either of these Provinces:

Provided further that there shall be paid out of the revenues of the Federation as grants-in-aid of the revenues of a Province such capital and recurring sums as may be necessary to enable that Province to meet the costs of such schemes of development as may be undertaken by the Province with the approval of the Federal Government for the purpose of promoting the welfare of the scheduled tribes in the Province or raising the level of administration of the scheduled areas in the Province to that of the administration of the rest of the Province:

Provided also that there shall be paid out of the revenues of the Federation as grants-in-aid of the revenues of the Province of Assam sums, capital and recurring, equivalent to—

(a) the average excess of expenditure over the revenues during the three years immediately preceding the date of commencement of this Constitution in respect of the administration of the areas specified in Part I of the table appended to paragraph 19 of the Eighth Schedule to this Constitution; and

(b) the costs of such schemes of development as may be undertaken by that Province with the approval of the Federal Government for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the Province.

Clause 200.—In sub-clause (2) of clause 200, for the word "fifty", wherever it occurs, substitute the words "two hundred and fifty".

New Clause 201-A.—After clause 201, insert the following clause, namely:—

"201-A. Application of the provisions relating to distribution of revenues during the period a Proclamation of Emergency is in operation.—Where a proclamation of Emergency is in operation whereby the President has declared that the security of India is threatened, then, notwithstanding anything contained in the foregoing provisions of this Chapter, the President may, by order,

direct that all or any of those provisions shall, until the expiration of the financial year in which such Proclamation ceases to operate, have effect subject to such exceptions or modifications as may be specified in such order."

Clause 202.—For Clause 202, substitute the following, namely:—

"**202. Definition of 'prescribed' and calculation of 'net proceeds' etc.**—(1) In the foregoing provisions of this Chapter—

(a) 'prescribed' means—

(i) until the Finance Commission has been constituted, prescribed by order of the President; and

(ii) after the Finance Commission has been constituted, prescribed by order of the President on the recommendation of the Finance Commission;

(b) 'net proceeds' means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of the Federation, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision in this Chapter, an order of the President may, in any case where under this Part of this Constitution the proceeds of any duty or tax are, or may be, assigned to any unit, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters."

New Clause 202-A and 202-B.—After clause 202, insert the following clauses, namely:—

"**202-A. Finance Commission.**—(1) There shall be a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President in his discretion.

(2) The Chairman shall be a person who holds or has held judicial office not inferior in rank to that of a Judge of a High Court.

(3) The members of the Commission shall receive such remuneration as the President may by order determine and shall hold office for a term of five years and may on the expiry of such term be re-appointed for another term of five years.

(4) It shall be the duty of the Commission to perform the functions conferred on the Commission by this Chapter or by any other law for the time being in force and to give advice to the Federal Government upon such financial matters or to perform such other duties of a financial character as may from time to time be referred or assigned to it by the President.

(5) The Commission shall determine its procedure and shall have such powers in the performance of its functions as the President may by order confer on it.

202-B. Recommendations of the Finance Commission.—The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with an explanatory memorandum, as to the action taken thereon by the President to be laid before the Federal Parliment."

Clause 207.—To clause 207, add the following Explanation, namely:—

"**Explanation.**—For the purposes of this section, any undertaking by the Government of any unit, such as the sale of the forest produce of any forest under the control of such unit or of any article produced in any jail within such

unit, shall not be deemed to be a trade or business, carried on by or on behalf of such Government."

Provisions relating to borrowing

Clause 210.—In sub-clause (3) of clause 210, for the word "Province", in the two places where it occurs, substitute the word "unit".

Ninth Schedule

Provincial Legislative Lists

In the Provincial Legislative List in the Ninth Schedule—

(1) in entry 43, omit the words "hearths and windows";

(2) for entry 50, substitute the following, namely:—

"50. Taxes on the sale, turnover or purchase of goods including taxes in lieu thereof on the use or consumption within the Province of goods liable to taxes within the Province on sale, turnover or purchase; taxes on advertisement;"

(3) in entry 53, for the word "Cesses" substitute the word "Taxes"; and

(4) in entry 56, for the word "Does" substitute the word "Taxes".

[Annexure I]

APPENDIX C

No. CA/24/Cons/47

CONSTITUENT ASSEMBLY OF INDIA

Council House,
New Delhi, the 4th March 1948.

FROM

THE HONOURABLE SARDAR VALLABHBHAI J. PATEL,
CHAIRMAN,
ADVISORY COMMITTEE ON MINORITIES FUNDAMENTAL RIGHTS, ETC.,

TO

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

DEAR SIR,

On behalf of the members of the Advisory Committee I have the honour to forward herewith the reports of the North East Frontier (Assam) Tribal and Excluded Areas and Excluded and Partially Excluded Areas (Other than Assam) Sub-Committees, adopted by the Committee at the meeting held on the 24th February 1948. The two sub-Committees had been set up by the Advisory Committee in their meeting held on the 27th February 1947 in pursuance of paragraphs 19(iv) and 20 of the Cabinet Mission's Statement dated the 16th May 1946 and the two reports had been drawn up after they had undertaken extensive tours of the provinces, examined witnesses and representatives of the people and the provincial governments and taken the views of the different political organizations.

2. Acting on an earlier suggestion of the Advisory Committee made on the 7th December 1947, the Drafting Committee had already incorporated in the Draft Constitution provisions on the basis of the recommendations contained in the reports of the two sub-Committees. This coupled with the fact that the recommendations were practically unanimous made our task easy, and except for the two amendments mentioned in the Appendix to this report, the Advisory Committee have accepted all the recommendations of the two sub-committees. In regard to these amendments, it was agreed that these should be noted for the present and necessary amendments made later.

3. Summaries of the recommendations of the two sub-committees are given on pages 208 to 218 of the report (Volume I) of Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee. Provisions embodying these recommendations are contained in the Fifth, Sixth and Eigth Schedules attached to the Draft Constitution.

Yours truly,
V. J. PATEL, CHAIRMAN

[Annexure II]

APPENDIX C

North East Frontier (Assam) Tribal and Excluded Areas

1. The following proviso is to be added to paragraph D(1) of appendix 'A' to Part I on page 20 of the report:—

"Provided that the Assam High Court shall have power of revision in cases where there is failure of justice or where the authority exercised by the District Court is without jurisdiction."

2. In Schedule 'B' on page 23 of the report the words "excluding the plains portion" be added after each of the items in the schedule so as to read as follows:—

The Sadiya and Balipara Frontier Tracts (excluding the plains portion).

The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract and the plains portion).

The Naga Tribal Area (excluding the plains portion).

[**Annexure III**]

APPENDIX C

FROM *The 28th July 1947.*

THE CHAIRMAN,

NORTH-EAST FRONTIER (ASSAM) TRIBAL & EXCLUDED AREAS

TO

THE CHAIRMAN,

ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS, MINORITIES, TRIBAL AREAS, ETC.,

SUB-COMMITTEE.

CONSTITUENT ASSEMBLY OF INDIA,

COUNCIL HOUSE, NEW DELHI.

SIR,

I have the honour to forward herewith my Sub-Committee's report on the Tribal and Excluded Areas of Assam. The report has been drawn up by us after a tour of the Province which included visits to the Lushai Hills District, the North Cachar Hills Sub-Division, the Mikir Hills and the Naga Hills District. The Committee could not visit the Garo Hills District on account of bad weather and difficult communications and the Jowai Sub-division of the Khasi Hills District could not also be visited for the same reason. We however examined witnesses and representatives of the Garo Hills District at Gauhati and paid a visit also to certain Garo villages on and near the Goalpara road. At most of the places we visited, we had to be satisfied with a visit to the headquarters of the district or tract and with a visit to one or two villages in the neighbourhood. To visit places in the interior would have taken us a great deal more of time and delayed our report considerably. Representatives of the tribes however visited the headquarters, even from long distances, and on the whole we feel that we have been able to get into contact with all the important representatives of the hill people and to take their views on the future administration of the areas. We have also taken the views of the different political organisations in the province and recorded the evidence of officials.

2. Except for the Frontier Tracts and Tribal Areas, we co-opted two members from the tribes of each of the districts visited. The co-opted members, with the exception of Mr. Kezehol (representative of the Kohima section of the Naga National Council and himself an Angami) who submitted his resignation during the final meeting at Shillong, discussed the proposals and signed (subject to dissent in the case of Mr. Kheloushe & Mr. Aliba Imti) the minutes of the meeting.

3. In connection with the co-option of members we would like to mention the "District Conference" convened by the Superintendent of the Lushai Hills as an elected body purporting to be representative of the whole of the Lushai Hills. The election to this body which consisted of twenty chiefs and twenty commoners with the Superintendent himself as President was boycotted by the Mizo Union which was the only representative body of the Lushais at that time and clearly could not be regarded by us as representing more than a

section of opinion, largely that of certain officials and chiefs controlled by them. Consequently the criticism that we co-opted members without consulting the Superintendent or his conference carries, in our opinion, no weight.

4. In the Naga Hills, the Committee had to face a similar situation in the sense that certain officials were influencing the extreme elements of the Naga National Council. Discussion of a number of points could not be carried on to the full extent on account of lack of agreement within the Naga National Council but we understand that on the occasion of the Governor's visit to Kohima, the more reasonable elements put forward their views. We find that our proposals not only contain the substance of these but go further in some respects. The resignation of Mr. Kezehol was due to the fact that his section of the Naga National Council was dissident. Our proposals correspond fully to the spirit of the resolution of the Naga National Council passed at Wokha in June 1946, and we feel confident that the majority of people in the Naga Hills District will find that our proposals go a long way towards meeting even their present point of view.

5. Our report (Volume I) is divided into two parts and the evidence forms a separate volume (Volume II). In the first part of our report we have given a bird's eye view of the areas as a whole, noting in particular their common features and giving the frame work of the scheme of administration recommended by us. In Part II a largely descriptive account of the different areas is given separately and we have mentioned their special features or needs.

6. We regret that our colleague Mr. Aliba Imti has not been able to attend the meeting to sign the report and hope that he will be able to attend the meeting of the Advisory Committee.

I have the honour to be,
SIR,
Your most obedient servant,
G. N. BARDOLOI,
Chairman,
North-East Frontier (Assam) Tribal & Excluded Areas Sub-Committee

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[Annexure IV]

APPENDIX C

REPORT OF THE SUB-COMMITTEE ON NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS

Part I

1. INTRODUCTORY—

The Excluded and Partially Excluded Areas of Assam as scheduled by the Order-in-Council under the Government of India Act, 1935, are as follows:—

Excluded Areas

The North-East Frontier (Sadiya, Balipara and Lakhimpur).

Tracts

The Naga Hills Districts.

The Lushai Hills District.

The North Cachar Hills Sub-Division of the Cachar District.

Partially Excluded Areas

The Garo Hills District.

The Mikir Hills (in the Nowgong and Sibsagar Districts).

The British portion of the Khasi and Jaintia Hills District, other than Shillong Municipality and Cantt.

There is also an area to the east of the Naga Hills District known as the Naga Tribal Area the position of which is covered by the provisions of Section 311 (1) of the Government of India Act: The Tirap Frontier Tract which adjoins the Lakhimpur Frontier Tract has no defined boundary with Burma.

The Assam Tribal and Excluded Areas Sub-Committee is required to report on a scheme of administration for all these areas.

2. GENERAL DESCRIPTION—

(a) **The Frontier Tracts.**—The Schedule quoted above shows the North-East Frontier Tracts as excluded areas. In considering the list of areas to be excluded or partially excluded and making recommendations to H. M. G. in 1935 the Government of India wrote as follows:—

"Balipara, Sadiya and Lakhimpur are essentially frontier areas inhabited by tribes in an early stage of development. Balipara has no defined outer boundaries and extends to the confines of Bhutan and Tibet." It will be seen that it was mentioned that Balipara has no definite outer boundaries but the position of Sadiya and Lakhimpur or the Tirap Frontier Tract was apparently the same. On the Tirap Frontier Tract in fact, the boundary with Burma has yet to be settled and all three regions include considerable areas of as yet virtually unadministered and only partially explored territory. The position of Balipara and Sadiya however differs from that of the Tirap Frontier in that there exists a boundary between Tibet and India. The facts are that in 1914 there was a tripartite convention with Tibet and China regarding the relations of the three Governments and in particular regarding the frontier between India and Tibet. The convention which contained an agreement about the frontier line between India and Tibet was ratified by the Tibetan authorities at Lhasa, and the line known as the MacMahon Line was indicated on a map of which a copy was given to the Lhasa Government which acknowledged it. The existence of this line was for a long time not known to the Assam Government, and on the other hand it was found that there was no notification under Section 60 of the Government of India Act, 1919, specifying the northern frontier of Assam, with the result that the MacMahon Line which is the frontier between Tibet and India is the legal boundary of Assam as well. In practice the position is peculiar. Though the Governor of Assam is vested with authority over the Frontier Tracts, it is taken to be exercised, not by virtue of the provisions applicable to Excluded Areas of the Government of India Act, 1935, but as the Agent of the Governor-General under Section 123 of the Act, *vide* Notification No. I-X, dated the 1st April 1937 of the Government of India in the External Affairs Department (Appendix B. page 130). All the costs of administration of the tracts are also borne by the Central Government and the Central Government are inclined to treat them as tribal areas within the meaning of Section 311 of the Government of India Act. On the other hand, the local officials treat the area as consisting of two parts. One which they call the Excluded Area and stretches up to the "Inner Line" boundary, and the Tribal Area, which by them is understood to mean the area beyond the "Inner Line" boundary. The "Inner Line" boundary is roughly along the foot of the hills and the area bounded by its occupied by a somewhat mixed population, while the hill portions beyond it are purely inhabited by the tribes. This treatment again does not appear to be strictly justifiable in law though it may be convenient to think of the administered plains portion of the area separately from the not fully administered hills. Since the frontier tracts are administered in practice by the Central Government as tribal areas, the absence of a notification under Section 60 of the Government of India Act, 1919, was regarded as an oversight. The position of these areas will be discussed further at a later stage, but it is clear from the foregoing that the Naga Tribal Area on the Eastern Frontier and the Balipara, Sadiya and Lakhimpur or Tirap Frontier Tracts on the North-Eastern Frontier fall under one category. The Balipara Frontier Tract which includes the

Subansiri area is the tract over which there is as yet the smallest measure of control and administration. This tract and the Sadiya Frontier Tract are inhabited by tribes such as the Senjithonji, Dafla, Apa Tani, Momba (Balipara) the Abor, Mishmi, Hkampti (Sadiya). The Tirap Frontier contains Singphaws (who were originally Kachins) and a number of tribes classed as Naga, while the Naga Tribal Area is largely inhabited by Nagas of the Konyak group. The policy on these Frontiers is to establish administration and control over the whole area right up to the frontier, and a five-year plan has been sanctioned by the Government of India. This plan mostly covers the Sadiya and Balipara Tracts but a few schemes of the Naga Tribal Area are also included in it. A separate plan for the development of the latter is under consideration.

(b) **The Excluded Areas.**—The Excluded Areas of the Naga Hills District, the Lushai Hills District and the North Cachar Hills Sub-division fall within the second category of areas over which the Provincial Ministry has no jurisdiction whatever and the revenues expended in this area are not subject to the vote of the provincial legislature. The Naga Hills District is the home of a good number of tribes classed as Naga, such as Angami, Ao, Sema, Lhota. Adjoining it is the Naga Tribal Area in the eastern portion of which a good deal of head hunting still goes on. Though the tribes are all called Naga, they speak different languages and have differing customs and practices also. The Lushai on the other hand, though consisting of a number of clans, are practically one people and speak a common language. The Kuki in the North Cachar Hills and elsewhere are people of the same stock as Lushai or Mizo and speak the same language or a dialect. The Lushai Hills District except for an inappreciable number of Lakhers in the extreme south contains a uniform population. The North Cachar Hills, on the other hand, provide sanctuary for the Kachari, Naga, Kuki, Mikir and Khasi. The largest of the tribes here are the Kachari and the villages of the different tribes, are more or less interspersed.

(c) **Partially Excluded Areas.**—The third category is the Partially Excluded Areas consisting of the Khasi Hills District (British portion), the Garo Hills District and the Mikir Hills which fall in two districts, viz. Nowgong and Sibsagar, are administered by the Provincial Government subject to the powers of the Governor to withhold or apply the laws of the Provincial Legislature with or without modifications, or to make special rules. The Khasia, incidentally, are the only line of the tribes in this area who speak a Monkhmer language; all the other tribes speak Tibeto-Burmese languages. Generally speaking, they inhabit the areas which bear their names but there are villages outside these districts which also contain some of the tribes. Thus, the Garo inhabit a number of villages in the Mymensingh district of Bengal in addition to many villages in the districts of Kamrup and Goalpara in Assam. The Khasi population is not only to be found in the British portion of the Khasi and Jaintia Hills, but the States (which comprise a fairly large area) round about Shillong are inhabited by the Khasis. These States, twentyfive in number, have the special feature that their chiefs are actually elected in a few cases by free election, though in the majority of cases the election is confined to a particular clan, the electorate consisting of Myntries of the clan only in some states, by a joint electorate of Myntries and electors elected by the people in general in others. The States have comparatively little revenue or authority and seem to depend for a good deal of support on the Political Officer in their relations with their peoples. There is a strong desire among the people of the States to "federate" with their brothers in the British portion, a feeling which the people on the British side reciprocate. Some of the Siems also appear to favour amalgamation but their idea of the Federation differs from that of the people in that the Chiefs seek a greater power for themselves than the people are prepared to concede to them.

Of the people in the Partially Excluded Areas, the Khasi are the most advanced and the Mikir the least. Unlike the Naga and the Lushai Hills these areas have had much more contact with people in the plains, situated as they are between the valleys of the Brahmaputra and the Surma. They have representatives in the provincial legislature who, in the case of the Garo and the Mikir Hills, are elected by franchise of the Nokmas and the village headmen respectively.

3. **DEVELOPMENT—**

As regards the degree of development and education in the excluded and Partially Excluded Areas, the most backward areas, comparatively appear to be the Mikir and the Garo Hills, both of which are Partially Excluded Areas. The Frontier Tracts, parts of which must be inhabited by people with on contact with civilisation or education, are of course on a different footing. The Khasi Hills have probably benefitted by the fact that the capital of the province is situated in them. In the Garo Hills, Christian Missions have spread some education along with Christianity but the Mikir Hills have suffered from the fact that they are divided between two districts, Nowgong and Sibsagar, and thus nobody's child. Partial exclusion has in a way been responsible for their backwardness also, since both the Governor of the province and the Ministry can disclaim the sole responsibility tor the area. The Sub-divisional Officers and Deputy Commissioners of these Hills moreover seem to have taken little interest in them and hardly any touring has been performed by officers in the Mikir areas. On the whole, however, the Hill Districts show considerable progress. The Khasi Hills have provided Ministers in the Provincial Government. The people of the Lushai Hills who have benefitted by the activities of the Missionaries among them cannot be said to be behind the people of the plains in culture, education and literacy. In literacy particularly they are in a better position than a good number of the plains areas and the general percentage of literacy among them is about 13 per cent, while the literacy among men only is about 30 per cent. Among the Naga also may be found a number of persons of college education, though the district as a whole appears to be less advanced than the Lushai Hills. In the Naga Hills, the demand for education is keener in the Mokokchung Sub-division than in the Kohima Sub-division. In the North Cachar Hills, the development of the people has not been impressive and the Sub-division as a whole should be classed as more backward than other areas and comparable with the Mikir rather than the Lushai Hills. While education has made some progress in all these areas, the conditions of life and pursuit of non-agricultural occupations cannot be said to have reached the level attained in the plains, although the degree of intelligence necessary is undoubtedly available in most of these areas, even in the tribal areas. We were in fact impressed by the intelligence of the Abor and Mishmi, the Sherdukpen, the Hkampti and even the Konyak of the tribal area. The skill of many of the tribes in weaving and tapestry contains the elements of a very attractive cottage industry—at present articles are made largely for personal use—but agriculture is practically the only occupation, and with the exception of considerable areas occupied by the Angami in the Naga Hill under terraced and irrigated cultivation and the advanced cultivation in the Khasi Hills, the mode of agriculture is still the primitive one of *jhuming*. Portions of the forest are burnt down and in the ashes of the burnt patch the seeds are sown; the following year a new patch of forest is felled and cultivated and so on, the first patch perhaps being ready again for cultivation after three or four years. The jhuming patches develop a thick growth of bamboo or weeds and trees do not grow on them. Thus the method is destructive of good jungle. In certain parts, of course, conditions may be said to be unfavourable to the terracing of the hillsides and there is no source of water supply other than rainfall. In the Lushai Hills for instance

comparatively few areas have the gradual slope which renders terracing easy; in the North Cachar Hills Sub-division, irrigation is difficult to arrange and the small hamlets occupied by the tribes cannot provide enough labour for terracing work. Attempts have however been made to introduce terracing and improved methods of cultivation as well as the growing of fruits, and there is little doubt that good progress will soon be feasible in these directions. A certain amount of political consciousness has also developed among the tribes, and we were much impressed by the demand of the Abor in the Sadiya Frontier Tract for representation in the provincial legislature. The idea of Government by the people through their chosen representatives is not a totally new conception to most of the hill people whose ways of life centre around the tribal and village councils, and what is required now is really an understanding of the mechanism and implications as well as the responsibilities of the higher stages of administration and the impracticability as well as the undesirable results of small groups of rural population being entrusted with too much responsibility. Generally speaking, it can be stated that all the excluded areas of the province, not taking into account at this stage the frontier and tribal areas, have reached the stage of development when they can exercise their votes as intelligently as the people of the plains. On the ground of inability to understand or exercise the franchise therefore, there is absolutely no justification for keeping the excluded areas in that condition any longer.

As regards the Frontier Tracts, not only has there been little education except in the fringes or plains portions, but administration has yet to be fully established over large tracts and the tribes freed from feuds or raids among themselves and from the encroachment and oppression of Tibetan tax collectors. The removal of the trade blocks set up by these Tibetans on the Indian side of the MacMahon Line sometimes creates delicate situations. Thus the country is in many ways unripe for regular administration. Only when the new five-year programme has made good headway will there be an adequate improvement in the position. Even the village councils in these tracts appear to be ill-organised and there seems to be little material as yet for local self-governing institutions though it may be possible to find a few people who can speak for their tribe. The plains portions are however on a different footing and the question of including them in the provincial administration needs careful examination. For example, we are of the view that *prima facie* there is little justification to keep the Saikhoaghat, the Sadiya plains portion and possibly portions of the Balipara Frontier Tract under special administration.

4. THE HILL PEOPLE'S VIEWS—

Though the Constituent Assembly Secretariat and we ourselves, issued a leaflet to provide information and create interest in the political future of India, the Constituent Assembly's functions and the objects of our tour, the Hill people, even of the Excluded Areas, were not found lacking in political consciousness. Perhaps not without instigation by certain elements, this consciousness has even instilled ideas of an independent status the external relations under which would be governed by treaty or agreement only. In the Lushai Hills District the idea of the Superintendent who constituted himself the President of the "District Conference" which he himself had convened (see para. 5 Part II) was that the District should manage all affairs with the exception of defence in regard to which it should enter into an agreement with the Government of India. A "Constitution" based on this principle was later drafted by the Conference. (The great majority of the Lushai however cannot be regarded as holding these views and it is doubtful if the District Conference represents the views of anybody other than certain officials and chiefs). In the Naga Hills, although the original resolution as passed by the Naga National Council at Wokha contemplated the administration of the area more or less like other parts of Assam, a demand was subsequently put forward for "an interim Government of the Naga people" under

the protection of a benevolent "guardian power" who would provide funds for development and defence for a period of ten years after which the Naga people would decide what they would do with themselves. Here again it seems to us clear that the views of a small group of people, following the vogue in the Naga Hills of decisions being taken by general agreement and not by majority—gained the acceptance of the National Council, for little more purpose than that of presenting a common front. In other areas more moderate views prevail. In the Garo Hills the draft constitution asked for all powers of government including taxation, administration of justice etc. to be vested in the legal council and the only link proposed with the Provincial Government was in respect of a few subjects like higher education, medical aid etc., other than the subjects of defence; external affairs and communications which were not provincial subjects. In the Mikir Hills and in the North Cachar Hills, which are the least vocal and advanced of the areas under consideration, there would probably be satisfaction if control over land and local customs and administration of justice are left to the local people. The Khasi Hills proposals were for a federation of the States and British portions; otherwise the proposals were similar to those made for the Garo Hills. A feeling common to all of the Hill Districts is that people of the same tribe should be brought together under a common administration. This has led to a demand for rectification of boundaries. The Lushai want the Kuki of Manipur and other areas in their boundaries, the Naga want the Zemi areas of the North Cachar Hills included in their district and so on.

5. **POLITICAL EXPERIENCE—**

Except for the Municipality of Shillong, there are no statutory local self-governing bodies in any of the Hill Districts. The partially excluded areas have elected representatives in the provincial legislature but in the Garo Hills the franchise is limited to the Nokmas and in the Mikir Hills to the headmen. Generally, however, the tribes are all highly democratic in the sense that their village councils are created by general assent or election. Chiefship among certain tribes like the Lushai is hereditary (although certain chiefs have been appointed by the Superintendent) but among other tribes appointment of headmen is by common consent or by election or, in some cases, selection from particular families. Disputes are usually settled by the Chief or headman or council of elders. In the Naga Hills what is aimed at is general agreement in settling disputes. Allotment of land for jhum is generally the function of the Chiefs or headmen (except in the Khasi & Jaintia Hills) and there are doubtless many other matters pertaining to the life of the village which are dealt with by the chiefs or elders, but while this may form a suitable background for local self-government the tribes altogether lack experience of modern self-governing institutions. The "District Conference" of the Lushai Hills, the tribal council of the North Cachar Hills and the Naga National Council are very recent essays in organising representative bodies for the district as a whole and have no statutory sanction. While there is no doubt that the Naga, Lushai, Khasi and Garo will be able to manage a large measure of local autonomy, the North Cachar tribes and the Mikir may yet want a period of supervision and guidance.

6. **THE SPECIAL FEATURES—**

Whatever the capacity of the different councils or conferences to manage the affairs of the areas may be, the general proposals for the administration of these areas must be based upon the following considerations:—

(a) The distinct social customs and tribal organisations of the different peoples as well as their religious beliefs. For instance, the Khasi and the Garo have a matriarchal system, the Lushai have hereditary chiefs, the Ao Naga have got the council of elders called '*tatar*' which is periodically renewed

by election. The laws of succession of the Lushai permit the youngest son of the family to succeed to the property of his father. Similarly, in the case of the Garo, the youngest daughter gets her mother's property and so on. Christianity has made considerable headway among the Lushai, Khasi and the Garo, but large numbers of the hill people still continue their own tribal forms of worship which some people describe as 'animism'.

(b) The fear of exploitation by the people of the plains on account of their superior organisation and experience of business, the hill people fear that if suitable provisions are not made to prevent the people of the plains from acquiring land in the hill areas, large numbers of them will settle down and not only occupy land belonging to the hill people but will also exploit them in the non-agricultural professions. Thus, the hill people seem to attach special value to the present system of an 'Inner Line' to cross which non-tribals entering the area require a pass, and the provisions prohibiting non-tribals from settling down or carrying on business without the approval of the district-officer. It is felt that even industries should not be started in the hill areas by non-tribals because that might mean exploitation of the people and the land by the non-tribals. In addition to these main points there is the question of preserving their ways of life and language, and method of cultivation etc. Opinions are expressed that there could be adequate protection in these matters only by transferring the government of the area entirely into the hands of the hill people themselves.

(c) In the making suitable financial provisions it is feared that unless suitable provisions are made or powers are conferred upon the local councils themselves, the provincial government may not, due to the pressure of the plains people, set apart adequate funds for the development of the tribal areas. In this connection we invite a reference to the views expressed in the Assam Government's Factual Memorandum on p. 67 of Constituent Assembly Pamphlet Excluded and Partially Excluded Areas—I.

7. **PROVISIONS OF 1935 ACT—**

The provisions of the Government of India Act are based on the principle that legislation which is passed by the Provincial Legislature is often likely to be unsuitable for application to the Hill Districts. The mechanism provided for "filtering" the legislation is therefore to empower the Governor of the Province to apply or not to apply such legislation. The full implications of the provisions of the Government of India Act are discussed in the Constituent Assembly pamphlets on "Excluded and Partially Excluded Areas' Parts I and II, and it is perhaps not necessary to discuss them exhaustively here. The main features of the provisions are that certain areas have been scheduled as excluded or partially excluded; it is possible for areas to be transferred from the category of excluded to the category of partially excluded by an Order-in-Council and, similarly, from the category of partially excluded to the category of non-excluded; legislation will not apply automatically to any such scheduled area even if it is a partially excluded area, but will have to be notified by the Governor who, if he applies them at all, can make alterations. The revenues for excluded areas are charged to the revenues of the Province and special regulations, which do not apply to the rest of the Province, may be made by the Governor in his discretion for excluded and partially excluded areas.

8. **FUTURE POLICY—**

The continuance or otherwise of exclusion cannot be considered solely from the point of view of the general advancement of an area. If that were so, all that would be necessary in the case of areas like the Lushai Hills which are considered sufficiently advanced would be to remove the feature of exclusion or partial exclusion. Such action may be suitable in the case of certain partially excluded areas in other parts of India. But in the Hills of Assam the fact that the hill people have not yet been assimilated with the

people of the plains of Assam has to be taken into account though a great proportion of hill people now classed as plains tribals have gone a long way towards such assimilation. Assimilation has probably advanced least in the Naga Hills and in the Lushai Hills, and the policy of exclusion has of course tended to create a feeling of separateness.

On the other hand, it is the advice of anthropologists (see Dr. Guha's evidence) that assimilation cannot take place by the sudden breaking up of tribal institutions and what is required is evolution or growth on the old foundations. This means that the evolution should come as far as possible from the tribe itself but it is equally clear that contact with outside influences is necessary though not in a compelling way. The distinct features of their way of life have at any rate to be taken into account. Some of the tribal systems such as the system of the tribal council for the decision of disputes afford by far the simplest and the best way of dispensation of justice for the rural areas without the costly system of courts and codified laws. Until there is a change in the way of life brought about by the hill people themselves, it would not be desirable to permit any different system to be imposed from outside. The future of these hills now does not seem to lie in absorption in the hill people will become indistinguishable from non-hill people but in political and social amalgamation.

9. THE HILL PEOPLE'S LAND—

The anxiety of the hill people about their land and their fear of exploitation are undoubtedly matters for making special provisions; it has been the experience in other parts of India and in other countries, that unless protection is given, land is taken up by people from the more advanced and crowded areas. The question has already acquired serious proportions in the plains portions of Assam and the pressure of population from outside has brought it up as a serious problem which in the next few years may be expected to become very much more acute. There seems to be no doubt whatever therefore that the hill people should have the largest possible measure of protection for their land and provisions for the control of immigration into their areas for agricultural or non-agricultural purposes. It seems also clear that the hill people will not have sufficient confidence if the control on such matters is kept in the hands of the provincial Government which may only be too amenable to the pressure of its supporters. Even the Head of the State under the new Constitution will probably be an elected head, and even though he may be elected also by the votes of the hill people, they may still have the fear, that he will give way to the pressure of the plains people on whose votes he may be largely dependent. The atmosphere of fear and suspicion which now prevails, even if it is argued that it is unjustified, is nevertheless one which must be recognised and in order to allay these suspicions and fears, it would appear necessary to provide as far as possible such constitutional provisions and safeguards as would give no room for them. Moreover, in the areas where no right of private property or proprietory right of the chief is recognised the land is regarded as the property of the clan, including the forests. Boundaries between the area of one hill or tribe are recognised and violation may result in fighting. Large areas of land are required for *jhum* and this explains in part the fear of the tribesman that its availability will be reduced if incursions by outsiders is permitted. In all the hill areas visited by us, there was an emphatic unanimity of opinion among the hill people that there should be control of immigration and allocation of land to outsiders, and that such controls should be vested in the hands of the hill people themselves. Accepting this then as a fundamental feature of the administration of the hills, we recommend that the Hill Districts should have powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. The only limitation we would place upon this is to provide that the local councils should not require payment for the occupation of vacant land by the Provincial Government for public purposes or

prevent the acquisition of private land, also required for public purposes, on payment of compensation.

10. **FOREST—**

As part of the question of occupation of land the transfer of the management of land now classed as reserved forest has also been raised. We have recommended that the legislative powers of the Local Councils should not cover reserved forests. While accepting the need for centralised management of the forests, we would strongly emphasise that in questions of actual management, including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the hill people should be taken into account, and we recommend that the Provincial Government should accept this principle as a part of its policy.

11. **JHUMING—**

We recommend further that the tribes should have the right of deciding for themselves whether to permit *jhum* cultivation, or not. We are fully aware of the evils of *jhum* cultivation that it leads to erosion, alteration of the rainfall, floods, change of climate etc. The tribes may not always be aware of these dangers but they have definitely begun to realise that settled or terraced cultivation is the better way. The Angami terrace on a large scale and in most of the hills definite attempts at introducing settled cultivation are being made. The main difficulty however is the fact that all hill areas do not lend themselves to terracing equally well and in some parts, there may, be a portion which could be terraced without prohibitive cost, or economically cultivated, by this method. Terracing means labour, a suitable hill side and the possibility of irrigation. When these are not all available it is obvious that the tribes cannot be persuaded to take up terracing and must continue *jhum*. While therefore, we feel strongly that *jhuming* should be discouraged and stopped whenever possible, no general legislative bar can be imposed without taking local circumstances in the account. Besides there is a feeling among the tribes that *jhuming* is part of their way of life, and that interference with it is wanton, and done with ulterior motives. The wearing out of that feeling must come from within rather than as imposition from outside which may cause undue excitement among the tribes. We propose therefore that the control of *jhuming* should be left to local councils who, we expect, will be guided by expert advice.

12. **CIVIL AND CRIMINAL COURTS—**

On the principle that the local customary laws should be interfered with as little as possible and that the tribal councils and courts should be maintained we recommended that the hill people should have full powers of administering their own social laws, codifying or modifying them. At present the Code of Criminal Procedure and the Civil Procedure Code are not applicable to the hill districts though officials are expected to be guided by the spirit of these laws. In practice, criminal cases, which are not of a serious nature like murder and offences against the State, are left to the tribal councils or chiefs to be dealt with in accordance with custom. Usually offences are treated as matters for the payment of compensation and fines are inflicted. There appears no harm and a good deal of advantage in maintaining current practice in this respect and we recommend accordingly that all criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and that so far as such offences are concerned the Code of Criminal Procedure should not apply. As regards the more serious offences punishable with imprisonment of five years or more we are of the view that they should be tried henceforth regularly under the Criminal Procedure Code. This does not mean that tribal councils or courts set up by the local councils should not try such cases and we contemplate that wherever they are capable of being empowered with powers under the Criminal Procedure Code this should be done.

As regards civil cases (among the tribes there is little distinction between criminal and civil cases) we recommend that except suits arising out of special laws, all ordinary suits should be disposed of by the tribal councils or courts and we see no objection to the local councils being invested with full powers to deal with them, including appeal and revision. In respect of civil and criminal cases where non-tribals are involved, they should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing Circuit Magistrates or Judges.

13. **OTHER LOCAL SELF GOVERNMENT—**

As regards such matters as primary schools dispensaries and the like which normally come under the scope of local self-governing institutions in the plains it is needless for us to say that the Hill Districts should get all such powers and except in the North Cachar Hills and the Mikir Hills, we are of opinion that the Hill People will be able to take over control of such matters without much difficulty. With a view to providing some training and thereby smoothening the transition, the Chairman of our Sub-Committee has already taken up the question of establishment of councils with powers of local boards. The difference between the councils we contemplate for the Hill Districts and Local Boards will already have been clear from the foregoing paragraphs. It is proposed to entrust these councils with powers of legislation and administration over land, village forest, agriculture and village and town management in general, in addition to the administration of tribal or local law. Over and above these matters the tribes are highly interested in education and feel that they should have full control over primary education at least. We have considered this question in all its aspects and feel that the safe policy to follow in this matter is to leave it to the local councils to come to a decision on the policy to be followed. We recommend that primary education should be administered by the Local Councils without interference by the Government of Assam. The Assam Government will however always be available to provide such advice and assistance as the Local Councils may require through its Education Department particularly with reference to the linking up of primary with secondary education. As regards secondary school education we do not consider that the Hill People in general are able to look after this subject themselves nor do we consider that this stage should be left without some integration at least with the general system of the Province. There is of course no objection to Local Council being made responsible for the management of secondary schools where they are found to have the necessary material. But we consider that no statutory provision for this necessary and that it should be open to the Council and the Government of Assam by executive instructions to make the necessary arrangements. The Local Councils will have powers of management in all other matters usually administered by local boards and we consider that on account of the special circumstances in the hills the councils should have powers to make their own administrative regulations and rules. We expect however that in all matters, particularly those involving technical matters like the management of dispensaries or construction of roads, the Local Councils and their staffs will work under the Executive guidance of the corresponding Provincial Department.

For the Mikir and the North Cachar Hills, we recommend that the necessary supervision and guidance should be provided for a period of six years which we expect will be the term of two councils by the appointment of the District or Sub-Divisional officer, as the case may be, as *ex-officio* President of the Council with powers, subject to the control of the Government of Assam, to modify or annul resolutions of the Council and to issue instructions as he may find necessary.

14. **FINANCE—**

(a) **Powers of the Council.**—The next question we propose to consider is finance. A demand common to the Naga Hills, the Khasi and Jaintia

Hills, the Garo Hills and the Lushai Hill is that all powers of taxation should vest in the National Councils. The National Conference of the Garo and of the Khasi and Jaintia Hills suggested a contribution to the provincial revenues or a sharing of certain items. If this were accepted even the Centre would have no powers to levy finances in these areas. Suggestions regarding contribution to provincial revenues are obviously based on the assumption that the district, in addition to what it needs for its own expenditure, will have a surplus to make over to the Provincial Government. In the case of the Garo Hills, it was suggested that the abolition of zamindari rights in that area would result in a considerable augmentation of the revenues of the district which would then be able to spare a certain sum to the Provincial Government, and generally the idea seems to be that given sufficient powers the Districts will be able to increase their revenues by exploitation of forests, mineral and hydro-electrical potentialities. Not only do some of the districts feel that they will have plenty of money in due course but the demand for all powers of taxation is based to a large extent on the fear that if the Provincial Government has those powers they may not get a fair deal and there may be diversion of money to other districts. Districts which, on the other hand feel that they do not command potential sources of revenue or at least realise that the development of the resources will take time during which they remained deficit can only make a vague demand for allocation of funds from a benevolent Province or Centre to supplement local resources.

The quetsion of finance and powers of taxation in an atmosphere of suspicion and fear is not an easy one. Any surplus district is likely to examine the provincial expenditure with a jealous eye to find out whether it gets a good share of expenditure for its own benefit or not. The extreme case is the expectation or demand that all the revenues derived from a particular district must be spent within that district itself. It is obvious however that where different districts are functioning under a common Provincial Government, the revenues of the whole area become diverted to a common pool from which they are distributed to the best possible advantage of the Province as a whole. Should all powers of taxation and appropriation of revenues be placed in the hands of the hills districts, the plains districts will not fail to make a similar demand, and if they do, there would be little justification to refuse it to them. The concession of such a demand to the various districts virtually amounts to breaking up the provincial administration. Besides, giving unregulated powers of taxation in general to small units is undesirable as it would result in different principles, perhaps unsound principles, being adopted in different places for purposes of taxation and in the absence of coordination and provincial control, chaos is more likely than sound administration. Further it is obvious that a local council and local executive would be much more susceptible and amenable to local pressure and influence than either the Provincial Government or its executive and will therefore not find it possible to undertake measures of taxation which the Province as a whole can. Even if taxes can be adequately resorted to by the local council, the proposal that an appropriation could be made for the provincial revenues does not sound practicable, for what the quantum of that will be is to be determined only by the National Council and it is quite obvious that the Council will decide the quantum from the point of view of its own need rather than the needs of the Province as a whole. The areas which feel that they have large potential sources of revenue must not forget that their demands for educational and other development are also very large and expanding. Various other factors such as the efficiency of tax collection and the cost of collecting staff have to be taken into consideration and we are of the view that the only practicable way is to allocate certain taxes and financial powers to the Councils and not all powers of taxation. Accepting this conclusion then we can consider what powers they should have. It goes without saying that they should have all the powers which local bodies in a plains district enjoy and we recommend that in respect of taxes like taxes on houses, professions or trades, vehicles,

animals, octroi, market dues, ferry dues and powers to impose cesses for specific purposes within the ambit of the Councils, they should have full powers. We expect that the Councils will seek the advice of the Provincial Government in exercising these powers but in view of the democratic spirit and nature of tribal life, we do not consider that any control by the Provincial Government which is prescribed by statute is necessary. In addition we would recommend powers to impose house tax or poll tax, land revenue (as land administration is made over to the Councils), levies arising out of the powers of management of village forest, such as grazing dues and licences for removal of forest produce.

(b) **Provincial Finance.**—There is no doubt that for some time to come the development of the Hills must depend on the rest of the province and they will be regarded as "deficit areas". As their development must be regarded as a matter of urgency considerable sums of money will be required but it is equally certain that measures of development are needed in other districts also and the claims of the Hills will not find a free field. The expenditure on the excluded areas has so far been a non-voted charge on the provincial revenues but unless it is provided in the Constitution that sums considered necesasry by the Governor for the Hills will be outside the vote of the legislature we have to consider how the provision of adequate revenues can be secured. In this connection, we would point out the admission in the Factual Memorandum* received from the Government of Assam that while the Excluded Areas have benefitted by the provision in the Government of India Act regarding them, the Partially Excluded Areas in respect of which the funds are subject to the vote of the legislature have suffered greatly. In particular, the position of the Mikir Hills seems to be a bad example. Here, only a small proportion of the revenue derived from the area which contains rich forests is utilised in the district and the position in respect of provision of schools, medical facilities etc. is unsatisfactory. We have noted the views of witnesses from the various political organisations that there is a lot of goodwill among the plains people towards the tribes but we feel that a more concrete provision is necessary as practical administration must be taken into account. It is admitted all round that the development of the hills is a matter of urgency for the province as a whole and there should therefore be a good measure of support for a specific provision.

Coming to the actual provision to be made, it has been suggested in some quarters that the revenue to be spent within a Hill District should be ear marked by provision in the Constitution and should form a definite proportion of the revenue of the Province. This, in our opinion, is an impracticable proposition since any statutory ratio is invariable for a number of years and there are no simple considerations on which it can be based. If it is based on the population, it is obvious that the expenditure would be totally inadequate, for the hill areas are generally sparsely populated. On the other hand, if a certain stage of development has been reached, the provision of funds on the basis of area may amount pampering the tracts, while revenue is needed elsewhere. We have no doubt that the fixation of a rigid ratio by statute would not be suitable for the Provincial Government to work on and may not be in the interests of the Hills themselves. We feel that placing the sums outside the vote of the legislature is likely to be distasteful to the Legislature and contrary to the democratic spirit and proceed therefore to consider an alternative.

It appears to us that the main reason why the needs of the Hills are apt to be overlooked is due to the clamour of more vocal districts and the facts that there is little attention to or criticism of, the provisions made for the Hills, which in the case of voted items are merged in general figures. If therefore a separate financial statement for each such area showing the revenue from it and the expenditure proposed is placed before the legislature, it would have, apart from the psychological effect, the advantage that it would draw attention specifically to any inadequacy and make scrutiny and criticism easy. It can of course be

* P. Excluded and Partially Excluded Areas—I (reference to pages are to pages in the original reports).

objected that criticism may be ignored and that the separate statement may therefore not serve any really useful purpose, but we nevertheless recommend the provision of a separate financial statement as likely to fulfil its purpose. We also recommend that the framing of a suitable programme of development, should be on the Government of Assam, either by statute or by an Instrument of Instructions, as an additional safeguard.

(c) **Central Subventions.**—While the Province may be expected to do its best to provide finances to the limit of its capacity, it seems to us quite clear that the requirements of the Hill Districts, particularly for development schemes, are completely beyond the present resources of Assam. Though the Districts are more developed than the Frontier Tracts in respect of which the Central Government has recognised the need for special grants for development, the position of the Hill Districts in comparison with the plains districts is not radically different. The development of the Hill Districts should for obvious reason be as much the concern of the Central Government as of the Provincial Government. Bearing in mind the special position of this province in respect of sources of central revenue, we consider that financial assistance should be provided by the Centre to meet the deficit in the ordinary administration of the districts on the basis of the average deficit during the past three years and that the cost of development schemes should also be borne by the Central Exchequer. We recommend statutory provisions accordingly.

(d) **Provincial Grants for the Local Councils.**—Some of our coopted Members have expressed the apprehension that the sources of revenue open to them may not provide adequate revenue for the administration of the District Council, particularly where there are Regional Councils. We have not made a survey of the financial position of the new councils and their requirements in the light of the responsibilities imposed on them but we recognise their claim for assistance from general provincial revenues to the extent that they are unable to raise the necessary revenue from the sources allotted to them for the due discharge of their statutory liabilities.

15. **CONTROL OF IMMIGRATION—**

The Hill People, as remarked earlier, are extremely nervous of outsiders, particularly non-tribals, and feel that they are greatly in need of protection against their encroachment and exploitation. It is on account of this fear that they attach considerable value to regulations like the Chin Hills Regulations under which an outsider could be required to possess a pass to enter the Hill territory beyond the Inner Line and an undesirable person could be expelled. They feel that with the disappearance of exclusion they should have powers similar to those conferred by the Chin Hills Regulations. The Provincial Government, in their view, is not the proper custodian of such powers since they would be susceptible to the influence of plains people. Experience in areas inhabited by other tribes shows that even where provincial laws conferred protection on the land they have still been subjected to expropriation at the hands of money-lenders and others. We consider therefore that the fears of the Hill People regarding unrestrained liberty to outsiders to carry on money-lending or other non-agricultural professions is not without justification and we recognise also the depth of their feeling. We recommend accordingly that if the local councils so decide by a majority of three fourths of their members, they introduce a system of licensing for money-lenders and traders. They should not of course refuse licences to existing money-lenders and dealers and any regulations framed by them should be restricted to regulating interest, prices or profit and the maintenance of accounts and inspection.

16. **MINES AND MINERALS—**

The present position is that except in relation to the Khasi States all powers are vested in the Provincial Government. The hill people

strongly desire that revenues accruing from the exploitation of minerals should not go entirely to the Provincial Government and that their Council should be entitled to the benefits also. In order to ensure this they demand that control should be vested in them in one way or another. We have considered this carefully keeping particularly in mind that the Khasi Hill States are now entitled to half the royalties from minerals and feel that the demand of the hills should be met, not by placing the management in their hands, but by recognising their right to a fair share of the revenue. The mineral resources of the country are limited and it is recognised by us that the issue of licences and leases to unsuitable persons is likely to result in unbusiness like working and devastation. We consider that the best policy is to centralise the management of mineral resources in the hands of the Provincial Government subject to the sharing of the revenue as aforesaid and also to the condition that no licences or leases shall be given out by the Provincial Government except in consultation with the local Council.

17. **LEGISLATION**—

The position under the Government of India Act, 1935, has already been described. It has been argued in some quarters that no provincial legislation should be applicable to the hills except with the approval of the Hill Council. This, we consider, is a proposition which cannot be acceded to without reservations. It is true that no legislation is now applicable without a notification by the Governor but the Governor in practice would apply the legislation unless there is a reason why it should not be applied, while the Council would probably be guided by other considerations. There are many matters in which the legislature has jurisdiction which has nothing to do with special customs in the hills and to provide that such legislation should not apply directly would only amount to obstruction or delaying the course of legislation which ought to be applied. It may also frustrate the application of a uniform policy through the whole province and subject everything to the limited vision of a local council. The Hill Districts will of course have their representatives in the provincial legislature and we feel that a bar should be placed only in the way of provincial legislation which deals with subjects in which the Hill Councils have legislative powers or which are likely to affect social customs and laws. We consider therefore that there is no need for a general restriction and we have provided accordingly for limited restriction in Clause L* of Appendix A to this Part. We have also included in this draft a clause concerning the drinking of rice-beer which is very much a part of the hill people's life. We feel that the Council should have liberty to permit or prohibit this according to the wishes of the people. We would draw attention to the fact that the rice-beer (Zu or Laopani) is not a distilled liquor and that its consumption is not deleterious to the same extent as distilled liquor consumed by tribes in other areas.

18. **REGIONAL COUNCILS**—

The conditions obtaining in the Naga Hills and the North Cachar Hills, in particular, need special provision. The Naga Hills are the home of many different tribes known by the general name of Naga; in the North Cachar Hills, there are Naga, Cachari, Kuki, Mikir and some Khasi or Synteng. Other Hills also contain pockets of tribes other than the main tribe. The local organisations referred to earlier have themselves found the need for separate Sub-Councils for the different tribes and the conditions are such that unless such separate councils are provided for the different tribes may not only feel that their local autonomy is encroached upon but there is the possibility of friction also. We have therefore provided for the creation of Regional Councils, if the tribes so desire. These Regional Councils will have powers limited to their customary law and management of their land and villages. We also propose that the Regional Councils shall be able to delegate their powers to the District Councils.

*Reference to pages are to pages in the original reports.

19. **EMERGENCY PROVISIONS—**

The picture drawn thus far is therefore that of an autonomous Council for the district with powers of legislation over the land, village, forests, social customs, administration of local law, powers over village and town committees, etc., with corresponding financial powers. These are far in excess of the powers of Local Boards. What if the Council or the executive controlled by it should misuse the powers or prove incapable of reasonably efficient management? Some of the Hill Districts are on the borders of India. What if their acts prove prejudicial to the safety of the country? Experience all over the country indicates that local bodies sometimes mismanage their affairs grossly. We consider that the Governor should have the power to act in an emergency and to declare an act or resolution of the Council illegal or void, if the safety of the country is prejudiced, and to take such other action as may be necessary. We also consider that if gross mismanagement is reported by a Commission, the Governor should have powers to dissolve the Council subject to the approval of the Legislature before which the Council, if so it desires, can put its case. (See clause Q of Appendix A*).

20. **THE FRONTIER TRACTS—**

(a) **Central Administration recommended.**—We have indicated the difference between the Frontier Tracts and other Hill Areas already. It is clear that the legal position on the Balipara and Sadiya Frontier Tracts is that they are part of the province right up to the MacMahon Line. Regular provincial administration is however not yet possible (except perhaps in the plains portions before the Inner Line) on account of the circumstances prevailing there. The policy followed in these tracts as well as on the Tirap Frontier (where there is no delineated frontier with Burma yet) and the Naga Tribal Area is that of gradually extending administration. We recommend that when the Central Government which now administers these areas (and which we consider it should continue to do with the Government of Assam as its agent) is of the view that administration has been satisfactorily established over a sufficiently wide area, the Government of Assam should take over the administration of that area by the issue of a notification. We also recommend that the pace of extending administration should be greatly accelerated and that in order to facilitate this, steps should be taken to appoint separate officers for the Lohit Valley, the Siang Valley and the Naga Tribal area which at present is in the jurisdiction of two different officers (the Political Officer, Tirap Frontier Tract and the Deputy Commissioner, Naga Hills District). We have provided that the administration of the areas to be brought under the provincial administration in future should also be similar to that of existing Hill Districts.

(b) **Lakhimpur Frontier and Plains Portions.**—Regarding the Lakhimpur Frontier Tract, it appears to be the view of the External Affairs Department that this Tract does not differ from the plains "and need not be considered in relation to the problems of the hill tribes." Our information goes to show that a portion of the Lakhimpur Frontier Tract was recently (during the war) included in the Tirap Frontier Tract. The view of the Political Officer regarding this portion differed from that of other witnesses and the circumstances here seem to need closer examination, as the Political Officer has stated that the area is inhabited by tribes people. There are certain Buddhist villages inhabited by Fakials who should be brought into the regularly administered area if possible. About the Lakhimpur Frontier Tract which is under the Deputy Commissioner Lakhimpur we have no hesitation in recommending that it should be attached to the regular administration of the District. The report of the Deputy Commissioner produced before us in evidence is clear on the point. We also conclude from the evidence collected at Sadiya that the Saikhoaghat portion of the

* Reference to pages are to pages in the original reports.

excluded area south of the Lohit river and possibly the whole of the Sadiya plains portion up to the Inner Line could be included in regular administration, but feel that the question needs more detailed investigation and recommend that it should be undertaken by the Provincial Government. The portion of the Balipara Frontier Tract round Charduar should be subjected to a similar examination, and the headquarters of the Political Officer of this tract should be shifted into the hills as early as possible.

(c) **Posa Payments.**—Certain payments are being made at present to the tribes on the North East Frontier. In the Balipara Frontier Tract payments called *posa* which total in all to about Rs. 10,000 per year, and certain customary presents are paid. These are vestigial payments of sums which the tribes used to claim in the days of the Ahom kings whether by way of *quid pro quo* for keeping the peace on the border and not raiding the plains or in recognition of a customary claim on the local inhabitants or territory. On the Tirap Frontier a payment of Rs. 450 per year is made to the Chief of Namsang as lease money for a tea garden. We have considered the question whether these payments should be continued in view of the costly development schemes being undertaken, and have come to the conclusion that it would be a mistake to stop them. The effect upon the tribes of such a step would be the feeling that the first act of the new Government was adverse to them and the result of any disaffection in this area might seriously jeopardise our aims of establishing administration and bringing the tribes, who are well disposed at present, into the fold of civilisation within our boundaries. The payments are negligibly small in comparison with the large sums of money required for these areas and we recommend that they should continue unchanged at any rate till there is a suitable opportunity for a review of the position.

21. REPRESENTATION—

(a) **Adult Franchise.**—The partially excluded areas are already represented in the provincial legislature. In the Garo Hills and Mikir Hills the franchise as already stated is a restricted one. The excluded areas have no representation at present. So far as the frontier tracts tribal areas are concerned they have no representation and the circumstances are such that until it is declared that an area is or can be brought under regular administration, representation cannot be provided. We are of opinion that examination should be made as soon as possible of this question in view of the very clear desire expressed by the Abor, Hkampti and others for representation. Meanwhile, we are of the view that there is no longer any justification for the exclusion of the Naga, Lushai and North Cachar Hills and that these areas should be represented in the provincial legislature. The restriction on the franchise in the Garo and Mikir Hills should be removed and, if there is universal adult franchise elsewhere, that system should be applied to all these Hills. We would note here that our colleagues from the Lushai Hills expressed some doubts about the feasibility of adult franchise in the Lushai Hills and seemed to prefer household franchise. We do not anticipate any real difficulty in adult franchise here if it is feasible elsewhere but would recommend that the position of the Lushai Hills may be considered by the appropriate body which deals with the question of franchise.

(b) **Provincial Representation.**—As regards the number of representatives of the Hill Districts in the provincial legislature, we are of the view that if the principle of weightage is recognised for any community, the case of the hill people should receive appropriate consideration in that respect. Though we do not propose that there should be any weightage for the hill people as a principle, we are clear that the number of representatives for each of the Hill Districts should not be less in proportion to the total number than the ratio of the population of the district to the total population even though this may, in some cases, mean a slightly weighted representation in practice. In the draft provincial constitution we find that it is provided that the scale of representation

in the provincial Assembly is not to exceed one representative for every lakh of the population. On this basis, the Hill Districts would, according to the minimum recommended by us, obtain representation as follows:—

	No.	Population
Khasi & Jaintia Hills	2	105,463
Garo Hills	3	223,569
Mikir Hills	2	149,746
Naga Hills	2	189,641
Lushai Hills	2	152,786
North Cachar Hills	1	37,361
TOTAL ..	12	858,566

It will be seen that if the total population of the Hills is taken, the number of representatives for all the Hills will be somewhat in excess of the number which would be arrived at on the basis of one representative for each lakh of the population. We are not only of the view that in the special circumstances of the Hills, representatives as recommended by us is necessary to provide proper representation but that the excess should not be adjusted to the detriment of the rest of Assam out of the total number admissible under Section 19(2) of the Draft Provincial Constitution. We have provided accordingly that in reckoning the number of representatives for the rest of Assam, the population and the number of representatives of the Hills shall not be taken into account. We contemplate that the Khasi and Jaintia Hills should include the Municipality and Cantonment of Shillong which is at present a general constituency. This will be an exception to the provision barring non-tribals from election in the Hill constituencies.

(c) **Federal Legislature.**—The total population of the Hill Districts given above clearly justifies a seat for the Hill Tribes in the Federal Legislature on the scale proposed in Section 13(c) of the Draft Union Constitution.

(d) **Joint Electorate.**—The Hill Districts have this simple feature, that their populations are almost entirely tribal. In the Khasi and Jaintia Hills (a pocket of Mikir excepted) in the Garo Hills, the Mikir Hills (some Rengma and Kuki excepted) the population is uniform. In the Naga Hills, among the different tribes like the Angami, Ao, Sema, there is now the beginning of a feeling of unity. The Naga Hills District has a population of 1·85 lakhs and is likely to get two representatives at least which might enable the allocation of one each to the two main centres of Kohima and Mokokchung. In the North Cachar Hills the position is less satisfactory but in all these areas we consider that the electorate should be joint for all the tribes and non-tribals residing there. In view of the preponderance of tribal people we consider that no reservation of seats is necessary and the only condition which we propose is that the costituencies should not overlap across the boundaries of the district (in the case of North Cachar, the subdivision).

(e) **Non-Tribals Barred.**—We have considered the question of non-tribals residing permanently in the hills. Some of these have been in residence for more than one generation and may well claim the right to stand for election but we find that the feeling against allowing them to stand for election is extremely strong. It is felt that even though in a predominantly tribal constituency the chances are all in favour of a tribal candidate, the non-tribals, in view of their greater financial strength can nullify this advantage. We recommend therefore that plains people should not be eligible for election to the provincial legislature from the Hill Constituencies.

22. **THE PROVINCIAL MINISTRY—**

That the Hills can already provide representatives who can take part in the provincial administration is obvious. On four occasions residents of the Khasi Hills have occupied a place in the provincial Executive Council or Cabinet. The hitherto excluded Lushai and Naga Hills have the same potentiality. With Ministers from the Hills in the Cabinet

it may be expected indeed that their interests will not be neglected. The doubts raised are: will there necessarily be a Minister from the Hills even when a suitable person is available? If not who will look after the interests of the Hills? The Hill areas contain close upon a million people and in view of the great importance of the frontier hills in particular, it would be wise of any Ministry to make a point of having at least one colleague from the Hills. It is our considered view that representation for the Hills should be guaranteed by statutory provision if possible. If this is not possible, we are of the view that a suitable instruction should be provided in the instrument of instructions or corresponding provision. The development of the Hills however is a matter which requires special attention in the interests of the province and we feel that if the circumstances necessitate it, the Governor should be in a position to appoint a special Minister who should, if possible, be from among the hill people. In this connection we would refer to the need for a special development plan which we have referred to in Para.*16(*b*).

23. **THE SERVICES**—

A good deal of discussion has centred round the problem of providing suitable officials for the hills. The number of suitably qualified candidates from the hill people themselves has been inadequate hitherto and the utilisation of other candidates has of course been found necessary. No special service has been considered necessary for the hills. On the other hand there has been a certain amount of feeling against the plains officials notably against inferior staff, who have been posted there. We have considered this question carefully and come to the conclusion that no separate service for the Hills is desirable or necessary and that there should be free interchange between hill and non-hill officials, at least in the higher cadres of the provincial and All-India Services. The District Councils will doubtless appoint all their staff from their own people and to prevent interchangeability would be tantamount to perpetuating exclusion as our proposals involve a good deal of separation already. We recommend therefore that while non-tribal officials should be eligible for posting to the hills and vice versa should be selected with care. We also recommend that in recruitment the appointment of a due proportion of hill peoples should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government.

24. **A COMMISSION**—

We have referred to the need for special attention to the development of the Hills. No statutory provision for the earmarking of adequate funds is considered possible. On the other hand, the Hill Councils recommended by us will have far greater powers than local bodies in plains districts. The Hills occupy a position of strategic importance and it is in our opinion of great importance for constant touch to be maintained with the development and administration of these areas. For this purpose we consider that there should be provision for the appointment of a Commission, on which we expect that there will be representatives of the tribes, to examine the state of affairs periodically and report. We recommend that there should be provision to appoint the Commission *ad hoc* or permanently and that the Governor of the province should have the responsibility and power for appointing it. The report of the Commission should enable the Government to watch the progress of the development plan and take such other administrative action as may be necessary.

25. **PLAINS TRIBALS**—

The total tribal population of Assam was shown in the Census of 1941 as 2,484,996. The excluded and partially excluded areas contribute to this only 863,248. About 1·6 million tribals therefore live in the plains including those who work as tea-gardens labour. The terms of our enquiry are that we report on a scheme of administration for the tribal and excluded areas and the question of tribes people in the plains strictly does not concern us.

Reference to para. is to para. in the original report.

Their case will doubtless be dealt with by the Minorities Sub-Committee. The population of the plains tribals which is being gradually assimilated to the population of the plains, should for all practical purposes be treated as a minority. Measures of protection for their land are also in our view necessary. At present certain seats are reserved in the provincial legislature for them. The question of their representation and protection will we hope be considered by the Minorities Sub-Committee. We have kept in mind however the possibility of there being certain areas inhabited by tribals in the plains or at the foot of the hills whom it may be necessary to provide for in the same manner [See Clause* A (3) of Appendix A].

26. **BOUNDARIES—**

All the Hills people have expressed a desire for the rectification of district boundaries so that people of the same tribe are brought under a common administration. We sympathise with this desire but find that it is only outside our terms of reference but also that it would necessitate an amount of examination which would make it impossible for us to submit our report to the Advisory Committee in time. The present boundaries have, we find, been in existence for many years and we feel that there is time for a separate commission set up by the Provincial Government to work on the problems involved. An exception should however be the case of the Barpathar and Sarupathar mauzas included in the Mikir Hills which the Provincial Government have already decided should be removed from the category of excluded and added to the regularly administered areas (see memorandum of Government of Assam). We agree with this recommendation and propose that it should be given effect when the new Constitution comes into force.

27. **NON-TRIBAL RESIDENTS—**

In the Hill Districts, a certain number of non-tribal people reside as permanent residents. They generally follow non-agricultural professions but some cultivate land also. We have recommended that these residents should not be eligible to stand for election to the provincial legislature. It is necessary however to provide them with representation in the local council if they are sufficiently numerous. We contemplate that constituencies may be formed for the local councils if the number of residents is not below 500 and that non-tribal constituencies should be formed where this is justified.

28. **DRAFT PROVISIONS—**

For the sake of convenience we have condensed most of our recommendations into the forms of a draft of provisions in roughly legal form and this draft will be found as an appendix to this part. The draft also contains certain incidental provisions including finance not referred to in this report.

29. **TRANSITIONAL PROVISIONS—**

Reference has been made to the constitutions drafted in the different district for their local councils. This is of course the expression of the strong desire for autonomy in the Hill District. Rather more important however are the individualities of the different tribes and the distinctness of their customs and social systems. If the tribes are allowed to decide the composition and powers of their own councils it will doubtless afford them the maximum of sentimental satisfaction and conduce also to the erection of a mechanism suited without question for their own needs and purposes. While therefore it will be necessary in the existing conditions for the Governor of Assam (as the functionary who will carry on the administration till the new constitution comes into force) to frame provisional rules for holding elections and constituting the councils. We recommend that the councils thus convened should be provisional councils (one year) and that they should frame their own constitution and regulations for the future.

* Reference to clause is to clause in the original report.

APPENDIX C

[Annexure V]

APPENDIX A* TO PART OF NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS SUB-COMMITTEE REPORT

A (1) The areas included in Schedule* A to this Part shall be autonomous districts.

(2) An autonomous district may be divided into autonomous regions.

(3) Subject to the provisions of section P the Government of Assam may from time to time notify any area not included in the said schedule as an autonomous district or as included in an autonomous district and the provisions of this Part shall thereupon apply to such area as if it was included in the said schedule.

(4) Except in pursuance of a resolution passed by the District Council of an autonomous district in this behalf the Government of Assam shall not notify any district specified or deemed to be specified in the schedule or part of such district, as ceasing to be an autonomous district or a part thereof.

B (1) There shall be a District Council for each of the areas specified in Schedule* A. The Council shall have not less than twenty nor more than forty members, of whom not less than three-fourths shall be elected by universal adult franchise.

Note.—If adult franchise is not universally adopted this provision will have to be altered.

(2) The constituencies for the elections to the District Council shall be so constituted if practicable that the different tribals or non-tribals, if any, inhabiting the area shall elect a representative from among their own tribe or group:

Provided that no constituency shall be formed with a total population of less than 500.

(3) If there are different tribes inhabiting distinct areas within an autonomous district, there shall be a separate Regional Council for each such area or group of areas that may so desire.

(4) The District Council in an autonomous district with Regional Council shall have such powers as may be delegated by the Regional Council in addition to the powers conferred by this constitution.

(5) The District or the Regional Council may frame rules regarding (*a*) the conduct of future elections, the composition of the Council, the office bearers who may be appointed, the manner of their election and other incidental matters, (*b*) the conduct of business, (*c*) the appointment of staff, (*d*) the formation and functioning of subordinate local councils or boards, (*e*) generally all matters pertaining to the administration of subjects entrusted to it or falling within its powers:

Provided that the Deputy Commissioner or the Sub-divisional officer as the case may be of the Mikir and the North Cachar Hills shall be the Chairman *ex-officio* of the District Council and shall have for a period of six years after the constitution of the Council, powers subject to the control of the Government of Assam to annul or modify any resolution or decision of the District Council or to issue such instructions as he may consider appropriate.

C (1). The Regional Council, or if there is no Regional Council, the District Council, shall have power to make laws for the area under its jurisdiction regarding (*a*) allotment, occupation or use for agricultural, residential or other non-agricultural purposes, or setting apart for grazing, cultivation, residential or

* References to appendices and schedules are to appendices and schedules in the original reports.

other purposes ancillary to the life of the village or town, of land other than land classed as reserved forest under the Assam Forest Regulation, 1891 or other law on the subject applicable to the district.

Provided that land required by the Government of Assam for public purposes shall be allotted free of cost if vacant, or if occupied, on payment of due compensation in accordance with the law relating to the acquisition of land, (*b*) the management of any forest which is not a reserve forest, (*c*) the use of canal or water courses for the purposes of agriculture, (*d*) controlling, prohibiting or permitting the practice of *jhum* or other forms of shifting cultivation, (*e*) the establishment of village or town committees and council and their powers, (*f*) all other matters relating to village or town management, sanitation, watch and ward.

(2) The Regional Council or if there is no Regional Council, the District Council shall also have powers to make laws regarding (*a*) the appointment or succession of chiefs or headmen, (*b*) inheritance of property, (*c*) marriage and all other social customs.

D (1). Save as provided in Section F the Regional Council, or if there is no Regional Council, the District Council, or a court constituted by it in this behalf shall have all the powers of a final court of appeal in respect of cases or suits between parties, all of whom belong to hill tribes, in its jurisdiction.

(2) The Regional Council, or if there is no Regional Council the District Council, may set up Village Councils or Courts for the hearing and disposal of disputes or cases other than cases tribal under the provisions of Section F, or cases arising out of laws passed by it in the exercise of its powers, and may also appoint such officials as may be necessary for the administration of its laws.

E. The District Council of an autonomous district shall have the powers to establish or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways and in particular may prescribe the language and manner in which primary education shall be imparted.

F (1). For the trial of acts which constitute offences punishable with imprisonment for five years or more or with death, or transportation for life under the Indian Penal Code or other law applicable to the district or of suits arising out of special laws or in which one or more of the parties are non-tribals, the Government of Assam may confer such powers under the Criminal Procedure Code or Civil Procedure Code as the case may be on the Regional Council, the District Council or Courts constituted by them or an officer appointed by the Government of Assam as it deems appropriate and such courts shall try the offences or suits in accordance with the Code of Criminal Procedure or Civil Procedure as the case may be.

(2) The Government of Assam may withdraw or modify powers conferred on the Regional Council or District Council or any court or office under this section.

(3) Save as provided in this section the Criminal Procedure Code and the Civil Procedure Code shall not apply to the autonomous district.

Note.—"Special Laws"—Laws of the type of the law of contract, company law or insurance etc. are contemplated.

G (1). There shall be constituted a District or Regional Fund into which shall be credited all moneys received by the District Council or Regional Council as the case may be in the course of its administration or in the discharge of its responsibilities.

(2) Rules approved by the Comptroller of Assam shall be made for the management of the Fund by the District or Regional Council and management of the Fund shall be subject to these rules.

H (1). A Regional Council, or if there is no Regional Council the District Council shall have the following powers of taxation:

(*a*) subject to the general principles of assessment approved in this behalf for the rest of Assam, land revenue, (*b*) poll tax or house tax.

(2) The District Council shall have powers to impose the following taxes, that is to say (*a*) a tax on professions, trades or calling, (*b*) a tax on animals, vehicles, (*c*) toll tax (*d*) market dues, (*e*) ferry dues, (*f*) cesses for the maintenance of schools, dispensaries or roads.

(3) A Regional Council or District Council may make rules for the imposition and recovery of the taxes within its financial powers.

I (1). The Government of Assam shall not grant any licence or lease to prospect for or extract minerals within an autonomous district save in consultation with the District Council.

(2) Such share of the royalties accuring from licences or leases for minerals as may be agreed upon shall be made over to the District Council. In default of agreement such share as may be determined by the Governor in his discretion shall be paid.

J (1). The District Council may for the purpose of regulating the profession of moneylending or trading by non-tribals in a manner detrimental to the interests of the tribals make rules applicable to the district or any portion of it: (*a*) prescribing that except the holder of a licence issued by the Council in this behalf no person shall carry on moneylending, (*b*) prescribing the maximum rate of interest which may be levied by a moneylender, (*c*) providing for the maintenance of accounts and for their inspection by its officials, (*d*) prescribing that no non-tribal shall carry on wholesale or retail business in any commodity except under a licence issued by the district council in this behalf:

Provided that no such rules may be made unless the District Council approves of the rules by a majority of not less than three-fourths of its members:

Provided further that a licence shall not be refused to moneylenders and dealer carrying on business at the time of the making of the rules.

K (1). The number of members representing an autonomous district in the Provincial Legislature shall bear at least the same proportion to the population of the district as the total number of members in that Legislature bears to the total population of Assam.

(2) The total number of representatives allotted to the autonomous districts (which may at any time be specified in Schedule A*) in accordance with Subsection (1) of this Section shall not be taken into account in reckoning the total number of representatives to be allotted to the rest of the Province under the provisions of Section .....of the Provincial Constitution.

(3) No constituencies shall be formed for the purpose of election to the Provincial Legislature which include portions of other autonomous districts or other areas nor shall any non-tribal be eligible for election except in the constituency which includes the Cantonment and Municipality of Shillong.

L (1) Legislation passed by the provincial legislature in respect of (*a*) any of the subjects specified in section C or

(*b*) prohibiting or restricting the consumption of any non-distilled alcoholic liquor, shall not apply to an autonomous district.

(2) A Regional Council of an autonomous district or if there is no Regional Council, the District Council may apply any such law to the area under its jurisdiction, with or without modification.

M. The revenue and expenditure pertaining to an autonomous district which is credited to or met from the funds of the Government of Assam shall be shown separately in the annual financial statement of the Province of Assam.

* Reference to schedule is to schedule in the original report.

N. There shall be paid out of the revenues of the Federation to the Government of Assam such capital and recurring sums as may be necessary to enable that Government—(*a*) to meet the average excess of expenditure over the revenue during the three years immediately preceding the commencement of this constitution in respect of the administration of the areas specified in Schedule A; and (*b*) to meet the cost of such schemes of development as may be undertaken by the Government with the approval of the Federal Government for the purpose of raising the level of administration of the aforesaid areas to that of the rest of the province.

O (1). The Governor of Assam may at any time institute a commission specifically to examine and report on any matter relating to the administration or, generally at such intervals as he may prescribe, on the administration of the autonomous districts generally and in particular on (*a*) the provision of educational and medical facilities and communications (*b*) the need for any new or special legislation, and (*c*) the administration of the District or Regional Councils and the laws or rules made by them.

(2) The report of such a commission with the recommendations of the Governor shall be placed before the provincial legislature by the Minister concerned with an explanatory memorandum regarding the action taken or proposed to be taken on it.

(3) The Governor may appoint a special Minister for the Autonomous Districts.

P (1). The Government of Assam may, with the approval of the Federal Government, by notification make the foregoing provisions or any of them applicable to any area specified in Schedule B* to this part, or to a part thereof; and may also, with the approval of the Federal Government, exclude any such area or part thereof from the said Schedule.

(2) Till a notification is issued under this section, the administration of any area specified in Schedule B* or of any part thereof shall be carried on by the Union Government through the Government of Assam as its agent.

Q (1). The Governor of Assam in his discretion may, if he is satisfied that any act or resolution of a Regional or District Council is likely to endanger the safety of India, amend or suspend such act or resolution and take such steps as he may consider necessary (including dissolution of the Council and the taking over of its administration) to prevent the commission or continuation of such act or giving effect to such resolution.

(2) The Governor shall place the matter before the legislature as soon as possible and the legislature may confirm or set aside the declaration of the Governor.

R. The Governor of Assam may on the recommendation of a commission set up by him under section N order the dissolution of a Regional or District Council and direct either that fresh election should take place immediately, or with the approval of the legislature of the province, place the administration of the area directly under himself or the commission or other body considered suitable by him, during the interim period or for a period not exceeding twelve months:

Provided that such action shall not be taken without affording an opportunity to the District or Regional Council to be heard by the provincial legislature and shall not be taken if the provincial legislature is opposed to it.

Transitional Provisions:

Governor to carry on administration as under the 1935 Act till a Council is set up, he should take action to constitute the first District Council or Regional Council and frame provisional rules in consultation with existing tribal Councils

*Reference to Schedule is to Schedule in the original report.

or other representative organisations, for the conduct of the elections, prescribe who shall be the office bearers, etc. The term of the first Council to be one year.

GOPINATH BARDOLOI
(Chairman).
J. J. M. NICHOLS-ROY.
RUP NATH BRAHMA.
A. V. THAKKAR.

Schedule A

The Khasi and Jaintia Hills District excluding the town of Shillong.
The Garo Hills District.
The Lushai Hills District.
The Naga Hills District.
The North Cachar Sub-division of the Cachar District.
The Mikir Hills portion of Nowgong and Sibsagar District excepting the mouzas of Barpathar and Sarupathar.

Schedule B

The Sadiya and Balipara Frontier Tracts.
The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract).
The Naga Tribal Area.

APPENDIX C

[Annexure VI]

Copy of Notification No. 1-X, dated the 1st April 1937, from the Government of India in the External Affairs Department.

In exercise of the powers conferred by sub-section (1) of Section 123, read with sub-section (3) of Section 313, of the Government of India Act, 1935, the Governor General in Council is pleased to direct the Governor of Assam to discharge as his agent, in and in relation to the tribal areas beyond the external boundaries of the Province of Assam, all functions hitherto discharged in and in relation to the said areas by the said Governor as Agent to the Governor-General in respect of the political control of the trans-border tribes, the administration of the said areas and the administration of the Assam Rifles and other armed civil forces.

APPENDIX C

[Annexure VII]

REPORT OF THE NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS SUB-COMMITTEE

Part II

1. THE BALIPARA FRONTIER TRACT—

This is the tract between the Subansiri River on the east, Bhutan on the west and the MacMahon Line to the north, with its headquarters at Charduar about 20 miles from Tezpur. It is included in the Schedule to the Government of India (Excluded and Partially Excluded Areas) Order as an Excluded Area, but in practice it is administered by the Governor of Assam as the Agent to the Government of India and is treated in this respect as a tribal area. The portion immediately to the north of Charduar and up to the Inner Line is a plains portion the area of which is

estimated to be approximately 1,000 square miles. The censused portion of the area was 571 square miles and the population of 6,512 contained only 560 Dafla, the remaining number of 2323 persons enumerated as Assam tribes consisting of Cachari, Garo, Mikir and Miri. The area beyond the Inner Line is estimated to cover about 11,000 square miles and contain a population of approximately 350,000. For administrative purposes it is at present divided into two parts, the Balipara or Sela Agency and the Subansiri Area under two Political Officers. Particularly in the Subansiri Area there are portions which have not yet been explored by our officers, and the details of the tribes living there are still not fully known. In the Sela area administration has been extended as far as Dirang Dzong and this area contains tribes like the Momba, Sillung, Aka or Rhuso, Senjithonji. The Subansiri area is inhabited largely by Dafla (Nisu) and Apatani but large areas have yet to be visited and explored.

In the western portions of the tract the way of life of the tribes is influenced a good deal by Tibetan customs and Buddhist monastaries but in the eastern sector the people are much more primitive. Some terraced cultivation and orange gardens exist but people like the Aka depend on *jhuming*. Literacy among the tribes seems to be very poor in spite of the influence of monastaries. Except among the Momba there is little demand even for education. For their requirements of cloth and salt notably the inhabitants depend upon contact with the plains areas or with the Tibetans. The monastary at Towang exercises considerable influence over the lives of these tribes and puts forward claims to monastic taxation. The tribes keep poultry, pigs, goats and mithun. In the olden days some chiefs here apparently used to exercise a kind of right of levying taxes in plains villages. This appears to have been recognised by the Ahom Kings who allowed relief to the people liable to such taxes from other taxes to a corresponding extent. In connection with these levies an agreement* was entered into by the British Government for the payment of an annual subsidy, known as *posa*. Rs. 5,000 are paid to the Talung Dzongpons and the Sat Rajas of Kalaktang and some bottles of rum and cloth also are given. The tribes in return also given certain presents like ebony, a gold ring, two Chinese cups, two yak tails and two blankets. Similar payments of *posa* are made to the Chaduar Bhutia or Sherdukpen, Thembangia Bhutia, Aka and certain other tribes. Payments to the Dafla and Miri are however made only to freemen and in all cases cease on the death of the present holder. The total payment of *posa* comes to about 10,000 rupees per year. Maintenance of law and order in this area as well as defence against external encroachment is looked after by the posts occupied by the Assam Rifles.

Though some of the witnesses who appeared before us could speak Assamese and appeared to be intelligent, we are inclined to agree with the Political Officer's view that until the five-year plan which provides for an expansion of schools and communications has been given effect, there is likely to be little material in this Tract particularly in the Subansiri Area, for local self-governing institutions. For some time the problems of administration here must remain confined largely to the maintenance of peace among the tribes, prevention of encroachment and oppression by Tibetan tax collectors, extension of communications, and elementary facilities for obtaining medicine and primary education. Tibetan officials are known to have set up trade blocks with a view to compelling trade with Tibet rather than India and the removal of these obstructions is a matter which may involve political contact with Tibetan authorities. As already pointed out large areas are as yet *terra incognita* to our officers and the attitude of the tribes is one of fear or suspicion which may

*Clause IV of Agreement No. XLIV of 1888 with the Kapaschor or Kavatsun Akas runs as follows :—The "posa" we shall receive from Government is in lieu of the due we formerly levied on the Assamese inhabitants of the plains, and that we have no right to receive any food, service, dues or other token of superiority from any receipt in British territory . . . . .

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easily turn to hostility. It is clear however that the southern portions of the tract will develop earlier than the northern most portions and administration of the political agency type can therefore be gradually shifted northwards. The Political officers' view is that the time is not yet ripe for shifting his headquarters from Charduar to a place in the hills. The area round Charduar which is in the plains portion is inhabited mostly by non-tribals or detribalised people of tribal origin. The question of bringing it under regular administration needs therefore to be examined in detail by the Provincial Government. What we contemplate is that areas over which adequate control has been established should be brought under the regular provincial administration while areas further north remain under the control of the Central Government, as at present. The Centre should however administer the tract through the Provincial Government as its agent so that the Provincial Government remains in contact with the administration*.

We are also of the view that steps should be taken as soon as practicable to erect boundary pillars on the trade routes to Tibet at places where they intersect the MacMahon Line.

The payments of *posa* represent a small amount and the sentimental value attached to it and the probability that any cessation of it concurrently with the coming into force of the new constitution would have most undesirable consequences on the attitude of the tribes, should be kept in mind. It should clearly not be discontinued for the present.

2. THE SADIYA FRONTIER TRACT—

The Sadiya Frontier Tract is the tract between the Subansiri river on the west and the boundary of the Tirap Frontier Tract on the north-east. The latter boundary has been adjusted from time to time. The Frontier area comprising the Sadiya and Tirap Frontier Tracts is somewhat in the shape of a parabola which contains the area through which the Brahmaputra river with its tributaries debouches on to the plains. The Sadiya tract may be regarded as falling into two or three distinct portions. To begin with, there is the portion to the west consisting of the valley of the Dibang or Siang with Abor tribes like Minyong, Bori, Galong, Padam. The Valley of the Dibang in the centre covers the area inhabited by Idu or Chulikata Mishmi, and the valley of the Lohit is inhabited by Digaru and other Mishmi and certain Hkampti and Miri tribes. Included in these three broad divisions is the plains portion of the tract (which includes Saikhoaghat on the south bank of the Lohit river) which runs up to the foot of the hill (roughly along the Inner Line). As in the case of the Balipara tract, regular administration has yet to be established in portions up to the MacMahon Line, which itself needs to be demarcated by the erection of boundary pillars at least at the points where the trade-routes cross into India. The headquarters of the Political Officer is at Sadiya and there is an Assistant Political Officer at Pasighat.

The Assistant Political Officer of the Lohit Valley stays at Sadiya and his jurisdiction includes the Chulikata or Idu Mishmi in the north and the Digaru and others towards the east and south of the tract. There are no easy lateral communications between the Chulikata area and the Lohit Valley proper.

By inhabitants, the hill tract falls broadly into portions inhabited by Abor (Siang Valley) the Chulikata in the Dibang Valley and other Mishmi in the Lohit Valley, and the Hkampti or Shan who are a comparatively civilised tribe following Buddhism. In addition there is the mixed population of the Sadiya portion to the south of Inner Line containing non-tribals and some Miri. Although the Gallong Abor are somewhat different from the Padam and Minyong the languages are practically the same and the whole of the Abor

*See Assam Government's Factual Memorandum on page 70 of Excluded and Partially Excluded Areas—I (C. A. Pamphlet); all references to pages are to pages in original reports.

Tract could be regarded as reasonably uniform. The Mishmi area, though it falls into two separate portions along the Dibang and Lohit Rivers respectively, and the tribes do not understand one anothers language, could be treated as one. The Hkampti area which is the third one is small and the Sadiya population is a mixed one. The area beyond the Inner Line which is not censused is estimated to contain 250,000 Abor 40,000 Idu, 25,000 Digaru and Miji and about 2,000 Hkampti. The censused portion is an area of 3,309 square miles with a total population of 60,118 of which 39,974 are of tribal origin.

That total area of the tract may be in the neighbourhood of 15,000 square miles and its development and administration clearly necessitate the subdivision of the tract and the appointment of more officials. In fact the Political Officer has already recommended the division of the tract into two portions based on Pasighat and Sadiya respectively. This is roughly equivalent to a division into the Mishmi area and the Abor area respectively and the proposals under consideration at present seem to contemplate the posting of a Political Officer at Sadiya for the Mishmi Agency with an Assistant with headquarters at Walong (Lohit Valley) and a second Political Officer at Pasighat (now the headquarters of an A.P.O.). The main reason for keeping Sadiya as the headquarters for the Mishmi Agency would appear to be the lack of lateral communications between the Chulikata area in the Dibang Valley and the Digaru area in the Lohit Valley. It is clear however that Sadiya and the portion up to the Inner Line is in the plains and contains a mixed population. Cultivation in this tract is also settled and the people of the tract desire that it should not continue under the present system of exclusion. Moreover, there is the area occupied by the Hkampti who are settled cultivators professing Buddhism which has also spread a good deal of literacy among them. *Prima facie* there is a strong case for treating the plains portion of the tract as well as the Hkampti portion as regularly administered areas in the form perhaps of a separate subdivision or district. The distinctness of the Hkampti must however be borne in mind and the area will probably have to be treated as a separate taluk. An early and detailed examination of the whole question is clearly called for. If Sadiya is treated as plain, suitable headquarters for the Political officer of the Mishmi Area needs to be looked for keeping in mind the difficulties of communication between the Dibang and Lohit valleys.

With the exception of the Hkamptis who are settled cultivators, and may be regarded as comparatively civilised, and a few people in the plains portion who also do settled cultivation, the Abor and Mishmi pursue *jhuming* and appear to exhibit little competence in the art of raising crops. They of course eke out a livelihood by keeping poultry, sheep and *mithun*. The herds of *mithun* kept by these tribes are in fact the occasion for disputes between people as raiding for *mithun* seems to be in this area what head-hunting is in the Naga tribal area. Serious quarrels arising out of raiding for mithun may call for the intervention of the Political officer. The tribes are generally heavily addicted to opium and attempts to keep the growth and consumption of opium in check seem to be meeting with little success. Though we feel that the Abor and Mishmi are people who can be educated and assimilated to civilised administration in a comparatively short time, there is little literacy or education among them at present, and the depth of the area over which control has been established beyond the Inner Line does not seem to be great. Communications are the urgent need so that greater contact is possible event if the lack of education is regarded as no impediment. By the time the five year plan has been worked out (it contemplates the making of a road to Walong and improvement of communications in other respects also) it may be possible to give effect to the keenly expressed desire among the Abors of a share in the provincial administration. It is obvious that the pace of establishment of full-fledged administration in this area should be accelerated. A beginning should however be possible by way of political education of the people, if tribal councils are set

up to enable the different tribes to come together to discuss matters of mutual interest and understand the problems of administration.

The forests of this tract can produce a good revenue but land revenue in the plains portions amounts to about 50,000 and the poll tax which is also levied in this area amounts to about 15,000. This forest revenue in 1946-47 was 430,000.

3. **THE LAKHIMPUR AND TIRAP FRONTIER TRACTS—**

The exact position, legal and *de facto* is not clear. The Lakhimpur Frontier Tract is mentioned as one of the North-East Frontier Tracts scheduled as an excluded area. No frontier has as yet been laid down between Burma and India in this region. There is an area locally known as the Lakhimpur Frontier Tract which is treated as an excluded area with the Deputy Commissioner, Lakhimpur, as the Agent or Political Officer. The Tirap Frontier Tract, which apparently derives its name from the river of that name, is said at present to contain a number of villages added to it from the Lakhimpur Frontier Tract during the war, and the rest of the portion inhabited by Naga tribes towards the Burmese territory. In addition to the Tirap Frontier Tract the Political Officer, whose headquarters are at present in Margherita in Lakhimpur district, is also in charge of a portion of the Naga Tribal Area which stretches along the boundary of the Lakhimpur district till it touches the northern apex of the Naga Hills district boundary and then runs along the eastern boundary of the Naga Hills districts towards its southern projection towards Burma. The area of the Lakhimpur Frontier Tract as shown in the census is about 394 square miles. The area of the Tirap Frontier Tract can of course only be guessed as there is no definite boundary with Burma. It may be in the neighbourhood of 4,000 square miles. In population also the tract differs from part to part. The Lakhimpur Frontier Tract differs "in no way from the surrounding plains; possesses none of the characteristics of the hill areas and need not be considered in relation to the problems of the hill tribes". *In the portion of the Lakhimpur Frontier Tract which has now been taken into the Tirap Frontier Tract there are several villages inhabited by Kachins and others who are regarded as tribal and pay house tax. In the Tirap Frontier Tract a number of tribes classed as Naga such as Tikak, Yogli, Ranrang, Lungri, Sank-e, Mosang, Morang etc. reside. The whole of the area inhabited by the Naga tribes could appropriately be regarded as part of India since the economic relations of all these tribes are with India and not with any other country. The demarcation of a boundary with Burma is to be taken up therefore on this principal and the question is said to be now under consideration by the Government of India. It is obviously a matter which needs to be expedited.

In the northern portion of the Naga Tribal area (which may be really regarded as part of the Tirap Frontier, since for a considerable distance the boundary of this area runs along with the eastern boundary of Lakhimpur district) there are tribes classed as Konyak Naga and the relations of this area are also with the plains portion of the Lakhimpur district. For instance it is common for tribes from Namsang and Borduria to come frequently to Jaipur for their marketing etc., and a good number of them seem to speak Assamese. The area is thickly populated. The Singpho or Kachin are Buddhists and they had chiefs belonging to the old ruling family before the country was taken over in 1839. The agreements entered into in 1826 and 1836 are a dead letter and though the chiefs are consulted by the Political Officer whenever there is any dispute to be settled or other matter to be dealt with, the Political Officer is being looked up to more and more, and the chief is regarded only by way of being an adviser to the Political Officer.

* See North East Frontier and Excluded Areas (C.A. Pamphlet) paragraph 5 (c); all references to pages are to pages in the original reports.

Agriculture is mostly by the primitive method of *jhuming* and there are no educational facilities. The economic condition of the tract is pretty poor. The Kachin however are settled cultivators and are in a better position than the Naga. In the Naga Tribal Area head hunting is still practised and slavery also seems to exist.

For the Tirap Frontier Tract also the five year plan approved by the Government of India contemplates the extension of the benefits of administration. The headquarters is proposed to be moved to a place in the interior called Horukhunma and hospitals and schools are to be constructed. Both in the Tirap Frontier Tract and the Naga tribal area the policy is just the same, namely the extension of administration gradually up to the Burma frontier. This policy appears to us to be the correct one to follow, whatever the legal status of the area may be under the Government of India Act. As in the case of the MacMahon Line frontier, all the portion between the Burmese boundary and the administered area of Assam should be merged in Assam as soon as possible and the distinction between Tribal Area and administered Indian territory abolished.

The Lakhimpur Frontier Tract need no longer be treated as an excluded area. As regards the portions of this tract taken over into the Tirap Frontier Tract the justification for continuing it as a frontier area needs to be further examined and if no difficulty is likely to be caused by the inclusion of the Kachins and other tribes who live there in the Lakhimpur district the area should be merged in the district. In the rest of the area, steps should be taken to organise non-statutory tribal councils, panchayats etc., in anticipation of the time when this tract will be fit for inclusion in the provincial administration. For the proper administration of the Naga Hills tribal area it would appear desirable to provide more officials, and a separate officer with headquarters as close as possible to the area, if not inside, is necessary. It would appear that there is already sanction for a separate Sub-divisional Officer at Mokokchung under the control of the Deputy Commissioner, Naga Hills district but the present arrangement by which the tribal area is shared between the Deputy Commissioner, Kohima, and the Political Officer. Tirap Frontier Tract, needs to be further examined. It would perhaps be best to divide the portion into two districts one which will in due course either merge with the existing Naga Hills district and form a sub-division thereof or be a Konyak district, and another which will form a portion of another district under an officer with headquarters in the present Tirap Frontier Tract.

4. **NAGA HILLS DISTRICT—**

The Naga Hills District is an area of 4,289 square miles bounded on the east by the Naga tribal area, on the south by Manipur State and on the west by the Sibsagar district. The population was given as 189,641 of which 184,766 or 97.4 per cent were tribal, at the 1941 census. The district is inhabited by a number of Naga tribes notably the Angami, the Sema, the Lhota and the Ao. Of these tribes Angami are the most numerous and inhabit the area round Kahana, their number at the 1941 census being slightly over 52,000. The Aos are the next numerous numbering over 40,000 and the Semas come third with 35,741. These two tribes inhabit the area round Mokokchung which is a separate sub-division of the district, and the Sema also inhabit the region to the north-west of the Angami country. The tribes speak different languages and their *lingua franca* is Assamese or Hindustani. They have also differing customs and traditions. Areas claimed by the tribe or village are jealously guarded against encroachment and to such an extent in the Naga Tribal Area that a villager seldom ventures outside his village boundary. Within the boundary of the district proper there is generally speaking regular administration though during the war a slightly different atmosphere might have been introduced. Though the

percentage of literacy among male Naga is about 6 only, quite a good number of these have received high education. Female literacy among the Naga is however negligible, though in the Mokokchung Sub-division it was found to be nearly four per cent. Literacy seems to be higher in the Mokokchung area than the Kohima area and the demand for education is also keener here. As regards economic circumstances a good deal of terracing is done in the Angami areas and a number of Nagas seem to have taken up non-agricultural occupations —the planting of gardens, etc.

It has been mentioned that the district is inhabited by mutually exclusive, diverse tribes. A movement for unification has however been afoot in the last two or three years and a body known as the Naga National Council (with sub-councils of the different tribes) was formed in 1945. Though a non-official political organisation, many of its leaders and members are Government officials and the organisation has also received official recognition locally. Thus the anomalous position of Government servants participating in political activity exist and in part this situation is due to the fact, that the educated, influential and leading elements are Government servants. Though the formation of this Council may be taken as an indication that the unity of administration has given a sense of unity to the different tribes it would perhaps be a mistake to suppose that there has been any real consolidation, and the tenacity with which the tribes hold on to their own particular views of traditions is still a potent factor. A notable characteristic of Naga* tribes is that decisions in their tribal councils are taken by general agreement and not by the minority accepting the decisions of the majority. This feature, though perhaps well suited to village affairs, may lead to many an unsatisfactory compromise in matters of greater movement.

In June 1946, the Naga National Council passed a resolution expressing their approval of the scheme proposed by the Cabinet Mission in the State Paper of May 16, 1946, and their desire to form part of Assam and India. The resolution protested against the proposal to group Assam with Bengal. This resolution and the feeling which prompted it seems to have held the field throughout 1946, and the Premier of Assam who visited the district in November 1946 was greeted with the utmost cordiality. Early in 1947 the Governor of Assam, Sir Andrew Clow, visited the Naga Hills and advised the Nagas that their future lay with India and with Assam. Subsequently, towards the end of February 1947, the Naga National Council passed a resolution in which they desired the establishment of "an Interim Government of Nagas with financial provisions, for a period of ten years at the end of which the Naga people will be left to choose any form of Government under which they themselves choose to live." This resolution was of course completely different from the previous one in that it was based on the idea of being a separate nation and country. Subsequently the Naga National Council sent another memorandum in which they mentioned a "guardian power" without however stating who should be the guardian power, and it was found that they were extremely reluctant to express any choice openly between the three possibilities of the Government of India, the Provincial Government and H.M.G. It would appear that this was the formula on which a general measure of agreement could be obtained among the Nagas since there were clear indications that many of them were inclined to take moderate views more on the lines of the original resolution at Wokha but in view of the intransigeance of certain other members, probably of the Angami group, they were prevented from doing so.

Subsequent events connected with the visit of H. E. the Governor to the Naga Hills on the 26th of June 1946 show that the Nagas have dropped their

* Other tribes have this characteristic also in greater or lesser degree.

extreme demands. The substance of the claims made by the Nagas is now to maintain their customary laws and courts, management of their land with its resources, the continuance of the Regulations by which entry and residence in the Hills could be controlled and a review of the whole position after ten years.

5. LUSHAI HILLS DISTRICT—

This district has an area of 8,142 square miles and lies to the south of the Surma Valley. It forms a narrow wedge-shaped strip of territory about 70 miles wide in the north tapering to almost a point at its southern extremity and separates Burma from the State of Tripura and the Chittagong Hill Tracts of Bengal on the east and south-east respectively. With the exception of a small area at its southern extremity which is inhabited by Lakher tribesmen, the rest of the district is inhabited by the tribes known as Lushai or Mizo and found elsewhere in North Cachar subdivision, and Manipur as Kuki. The communications with the main inhabited areas of Aijal (headquarters) and Lungleh are difficult and there is only a bridal path connecting Aijal with Silchar. From Serang, near Aijal, communication by river, along the Dhaleswari, is possible and Demagiri in the south is connected with Rangamati in the Chittagong Hill Tracts, by the Karnaphuli river. There is also a bridal path connecting Lungleh with Rangamati. The population of this district is 152,786 according to the last census and over 96 per cent of the population is tribal. The district as a whole is hilly, with a general elevation of between 3,000 and 4,000 feet and the slopes are usually quite steep.

Jhuming, with the exception of certain orange gardens, is the common form of cultivation, and terracing and wet cultivation present many difficulties. Spinning and weaving is a common cottage industry, and every woman in a Lushai household spins and weaves for the needs of the family. Most attractive tapestry work is done in these hills and the designs make a very colourful display. Much of the weaving and spinning is done however for personal use and not for sale. The degree of literacy in the area is very high; the reason for it being probably the fact that a large proportion of the population is Christian and the Sunday Schools have assisted the spread of literacy even among the adult men but, apart from a few Government servants, the number of people following non-agricultural occupations is negligible. The general level of intelligence and civilised behaviour in this area is high and compares favourably with most places in the plains.

There are no local self-governing institutions and village life is to a great extent dominated by the chief who is generally hereditary*. Formerly the number of chiefs was small, probably 50 or 60, but on account of the increase in population and the growth of new villages the present number is over 300. The chiefs settle disputes in the village, make a distribution of land for *jhuming* and generally carry out any orders issued to them by the officials including such work as collection of taxes. Of late the relations between the chiefs and the people has been rather strained, and it would appear that one reason for this is the convening of the so-called District Conference by the Superintendent of the Lushai Hills. The "Mizo Union" was started some-time ago by the people (including chiefs also as members) as a non-official organisation with the consent of the Superintendent. This organisation seems to have been without a rival to begin with but in 1946 the Superintendent convened the District Conference with a membership of 40 of which 20 were commoners and 20 were chiefs. The District Conference was supposed to be elected by household franchise at the rate of one voter for every 10 houses and

*A certain number of non-hereditary appointments have been made of late by the Superintendent.

in the first conference, the chiefs and the people had separate electorates, that is the people elected their own representatives and the chiefs theirs. The conference apparently created little enthusiasm and the large representation of chiefs on it must have caused some dissatisfaction. The Superintendent was the President of the conference. Towards October 1946 this conference seems to have broken down and was virtually abandonded. Shortly before the visit of the Sub-Committee however fresh elections were held by the Superintendent. At this election a change was made in the franchise so that the separate electorate was abolished and chiefs and commoners voted jointly. The ratio of chiefs and commoners was however maintained and on this account the "Mizo Union" decided to boycott the elections with considerable effect on it. In fact it is claimed by the Mizo Union that only two or three hundred voters actually took part in the elections. However this might be, the convening of the District Conference which was claimed to be an elected body obviously brought it into rivalry with the Mizo Union, and since the conference was supported by the Superintendent, the Mizo Union incurred official disfavour.† The Superintendent being the President of the conference and the chiefs being largely under official control and influence, there was apparent justification for the suggestion that the District Conference was not representative of the views of the people. In fact the attitude of the Superintendent gave us very good reason to believe that the District Conference was completely dominated by him and was his mouthpiece. The Superintendent himself propounded a scheme before the Committee the purport of which was that all local affairs should be managed by a constitutional body elected by the district who would have their own officers appointed by themselves and that the Government of Assam or of the Union should pay only a certain sum of money amounting to the deficit of the district and enter into an agreement regarding the defence of the district and its external relations. To what extent the Superintendent believed that the Lushais could actually administer their own affairs efficiently in every matter other than defence is a matter of some doubt because in answer to a question whether he thought that the whole administration could be managed by them, he replied "I will not guarantee that it could be done". (See p.—Vol. II Evidence). In answer to a further question he gave it as his opinion that it would not be very long before the district could manage its own affairs and that the length of the period would depend upon whether there was interference from outside by bodies that are too powerful or not. The general impressions gathered by us during our discussions with representatives of various interests in the district was that, with the exception of a few people who are under the influence of the Superintendent, the attitude of the rest was reasonable and it would not be long before disruptive ideas prevailing now completely disappear.

The main emphasis in the demands of the Lushais was laid on the protection of the land, the prevention of exploitation by outsiders and the continuance of their local customs and language.

The district has a revenue of about 2 lakhs and an expenditure amounting to about six lakhs. A high school has recently been started. The Assam Rifles are stationed at Aijal and Lungleh.

6. **THE NORTH CACHAR HILLS SUB-DIVISION—**

This area is a sub-division of the Cachar district whose headquarters is Silchar. It is an area of 1,888 square miles inhabited by 37,361 people of which 31,529 were tribals, the remainder being accounted for by the various railway and other colonies of outsiders. The main feature of this sub-division is that it contains a number of different tribes

† There were incidents earlier leading to the seizure of the Mizo Union's funds by the Superintendents.

namely the Cachari, the Naga, the Kuki and Mikir; a small number of Synteng or Khasi also inhabit the area. The general characteristic is that the tribes named above, with the exception of one or two villages of Naga inhabited by a few Kuki, live in areas of their own and there is no intermingling of population of the different tribes in the villages. The Zemi Naga are however not in a compact block and live in three different portions with Kuki or Cachari in the intervening portions. The Mikir form a pocket to the north-west of the area and the Cachari roughly inhabit the central and south-west portions. The Cachari are the most numerous of the tribes with a population of about 16,000; the Kuki are about 7,000 and the Zemi about 6,000. Relations between the Kuki and the Naga are said to be unsatisfactory though for the time being relations appear to be good. It may be mentioned here that the Zemi have still unpleasant memories of bad treatment by the Angami of the Naga Hills District and there is not much love lost between them though they showed themselves responsive to instructions given by certain Angami officials from Kohima

There is little literacy in this area and cultivation is by the primitive method of *jhuming*. Unlike the Angami areas in the Naga Hills District, the hillsides here are much steeper and, apart from rainfall, there is no scope for irrigation. Then again, unlike the Angami, the Zemi live in small hamlets and it is not an easy matter to find adequate labour for the introduction of terracing and wet cultivation. A certain number of orange gardens have been planted and potatoes have been introduced into the district. There is little doubt that with the encouragement of education, for which there is a demand the tribes can be brought up to the level of the others; but at present while they are quite capable of understanding the broad outlines of the democratic mechanism and can take part in elections, it is unlikely that they will be able to manage a body like a local board without official aid. The main difficulty in this portion is however that caused by the existence of different tribes who have little feeling of solidarity among themselves. Quite recently a sort of tribal council to bring together the different tribes with a view to educating them in local self-government was undertaken by the Sub-Divisional Officer, but the Mikir, influenced as they were by people from the Mikir Hills who wanted an amalgamation of the Mikir area with the Mikir Hills portion, would not co-operate in the joint council. Then there is the question of choosing a common representative. The Cachari being the most numerous have some advantage and the area is obviously too small for the representation of more than one in the provincial legislature. It is likely however that there will be a sufficient combination for the purpose of electing a common representative. Since this area cannot share a representative with plains areas, the population of 37,000 will have to be provided with a representative of their own. If however a local self-governing body is formed in this district it is clear that there will have to be some kind of regional arrangement by which the different tribes have their own separate councils which will then come together in the form of a council for the whole sub-division.

Like most otherhill districts this area is also a deficit area. The same feeling which exists in other areas about safeguarding land and protection of the land from occupation by outsiders as well as excluding them also from other activities which may lead to exploitation prevails here. One feature of this area is that among the different tribes it is Hindustani which is more of common language than Assamese.

7. KHASI AND JAINTIA HILLS—

This partially excluded area consists of the Jaintia Hills formerly forming part of the Kingdom of the old Jaintia Kings and now forming the Jowai Sub-division, and some 176 villages in the Sadar Sub-division. The Khasi and Jaintia Hills as a whole consists of a large territory between

the Garo Hills on the west and the North Cachar Hills and the Mikir Hills on the east. The Khasi States which consist of 1,509 villages cover the western portion of the Hills and the British villages are interlaced with them. The people of the Jowai Sub-division are known as Synteng or Pnar and speak a dialect but with the exception of a small number of Mikir on the northern slopes of the Hills, the whole population of these Hills may be regarded as uniform. Unlike their neighbours who speak Tibeto-Burman tongues the Khasi form an island of the MonKhmer linguistic family.

The Khasi States, which are about 25 in number, are some of the smallest in India. The largest States are Khyriem, Mylliem and Nongkhlao and the smallest is Nonglewai. The system of inheritance of Chiefship is described as follows:—

"The Chiefs of these little States are generally taken from the same family inheritance going through the female. A uterine brother usually has the first claim and failing him a sister's son. The appointment is however subject to the approval of a small electoral body, and the heir-apparent is occasionally passed over, if for any reason, mental, physical or moral, he is unfit for the position. The electors are generally the myntries or lyngdohs, the representatives of the clans which go to form the State." In Langrin, the appointment is by popular election. In some of the States, if the Myntries are not unanimous in their choice, a popular election is held. The Chiefs are known as Siem in most States; but in some they are called Sardar, Lyngdoh in three of them and Wahadadar in one. The functions of the chiefs are largely magisterial and in the discharge of their duties they are assisted by their Myntries. The relations between them and the Government of India are based upon sanads issued to them. For specimen of these sanads Volume XII of Aitchison's Treaties Engagements and Sanads may be referred to. Under the terms of the sanad, the chiefs are placed completely under the control of the Deputy Commissioner and the Government of India and waste lands as well as minerals are ceded to the Government on condition that half the revenue is made over to the Siems. Their criminal and civil authority are also limited. The sanads do not mention the right to levy excise on liquor and drugs and presumably the Siems have that right. Though the States are not in the partially excluded areas, the main interest attaching to them is the fact that there is an understandable feeling among the people of the States that there should be a federation between the States and the British portions so that all the Khasi people are brought under a common administration. The position is that in the British areas, though there is now the franchise and a member is sent to the provincial legislature, there is no statutory local body for local self-government. The States, on the other hand, enjoy certain rights as stated above, and the problem is to bridge the gap.

The Khasi and Jaintia Hills have the advantage of the provincial headquarters Shillong, being situated among them. Literacy among the Khasi amounts to about 11 per cent with a male literacy of 19 per cent. The district is already enfranchised and the special features which it is desirable to bear in mind is the matriarchal system prevalent there, the democratic village systems and other special customs and traditions. Cultivation in the Khasi and Jaintia Hills may be regarded as comparatively advanced. There is a good deal of wet cultivation and the culture of oranges and potatoes is common. The Khasi have also taken to non-agricultural professions much more than other hill people.

8. **THE GARO HILLS**—

Which is the butt-end of the range of hills which constitute the water shed for the Brahmaputra and the Surma Valleys. The Garo who inhabit these hills are people of Tibeto-Burman origin and are similar to the Cachari.

The area of the district is 3,152 square miles and it is inhabited by a population of 233,569 of which 198,474 or nearly 85 per cent, are tribals, mainly Garo. The Garo inhabit not only the district which bears their name but there are villages inhabited by them in Kamrup and Goalpara also and portions of the Mymensingh district of Bengal joining the Garo Hills is inhabited by thousands of Garo.

The Garo are a people with a matriarchal system like the Khasi. The tribal system of the Garo is highly democratic and the whole village with the Nokma as the head or chairman takes part in the council if any matter is in dispute. The district as a whole is pretty backward with only about five literates in a hundred and lacking in communications. Christian missions have been active and there has been a certain amount of conversion but on the whole the Garo even while being able to produce a fair number of intelligent and literate people have yet to come up to the degree of the Khasi or the Lushai. Franchise at present is restricted to the Nokma but is unlikely that there will be any great difficulty in working a franchise system based on adult franchise than in most other areas.

In the Garo Hills also the sole occupation is agriculture and though garden crops are grown round the huts sometimes, the method is largely that of *jhuming*. The people weave their own clothes but there is no important cottage industry. The area is however much more in contact with the plains on either side of it than areas like the Lushai Hills or the Naga Hills.

The Garo are keenly desirous of uniting all the villages inhabited by Garo whether in the plains of Assam or in the Mymensingh district of Bengal under a common administration. The Bengal district of Mymensingh seems to be the home of about 48,000 Garo most of whom are on the fringe of the Garo Hills, and the question of rectification of the boundary to include this area in the Garo Hills district of Assam definitely deserves consideration. A similar examination is necessary in respect of other Garo villages in the Kamrup and Goalpara districts of Assam.

9. THE MIKIR HILLS—

The partially excluded area of the Mikir Hills with an area of about 4,400 square miles and a population of about 150,000 persons is split up between two districts namely Nowgong and Silsagar. The Mikir Hills form an area rather irregular in shape into which there projects an enclave of the Assam Valley. The western extremity of the partially excluded area actually reaches a point in the Khasi Hills and eastwards, it extends to a point not far from Dimapur while to the north it approaches Golaghat. It is clear that the irregular shape of this area makes the administration from centres outside the area rather inconvenient which apparently is the reason why the district has had to be split up between two plains districts. Being a rather sparsely populated* area with rather less than 50 persons to the square mile and containing no communications other than the railway passing through it, it has apparently not been considered suitable for treatment as a separate district. The Provincial Government has at present under consideration a proposal for the making of the whole of the Mikir Hills area into a separate sub-division, perhaps on the analogy of the North Cachar Hills Sub-division. Divided between two districts as it is and consistng of inhospitable territory in which *jhuming* is the only method of cultivation practised while malaria takes its toll, it has been sadly neglected in many ways and special steps are necessary for its development. Very obviously the present state of affairs where it is divided between two districts cannot continue if the area is to be developed and it should be made either a district or a sub-

* It may be noted however that the Lushai Hills are also sparsely populated and there is no railway running through it.

division with its headquarters somewhere in the middle of the bend so that it is accessible from both extremities. The area includes certain mouzas Barpathar and Sarupathar inhabited very largely by non-tribals which even at the time of the constitution of the partially excluded areas were considered doubtful areas for exclusion, and the Provincial Government have since taken a decision that the areas should be added to regularly administered portions as soon as possible.

The Mikir are probably the most backward of all the tribes of the Assam Hills though this backwardness is probably not their own fault. There are pockets of Mikir in the North Cachar and the Khasi Hills. Like the Garo and Khasi the Mikir desire the consolidation of their own tribesmen under a single administration. Unlike the Lushai or the Khasi Hills, Christianity has made little progress here.

While the special customs of the Mikir, their addiction to *jhuming* cultivation etc. necessitate that an arrangement must be made by which they are able to maintain their own system, the Mikir Hills at present find representation in the provincial legislature although through the restricted franchise of the headman, and opinion generally is that there is no objection to the extension of adult franchise in the area. The sparse population may give rise to certain practical difficulties in organising elections there but it would appear that these are not insurmountable.

The Mikir Hills are inhabited to some extent by Cachari (about 2,000) Rengma Naga and a few Kuki, but on the whole, the population may be regarded as uniform.

In view of the comparatively backward state of the Mikir and the fact that there are no self-governing institutions of a statutory type locally, it is necessary in introducing institutions of this kind to arrange for a period of supervision and guidance in other words, any local council set up in the hills should at first be subject to the control of the local District or Sub-divisional officer.

G. N. BARDOLOI
(Chairman),
J. J. M. NICHOLS-ROY,
RUP NATH BRAHMA,
A. V. THAKKAR.

APPENDIX C

[Annexure VIII]

SUMMARY OF RECOMMENDATIONS OF THE ASSAM SUB-COMMITTEE.

District Councils should be set up in the Hill Districts (see Section *B of Appendix A) with powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. This is subject to the proviso that no payment would be required for the occupation of vacant land by the Provincial Government for public purposes and private land required for public purposes by the Provincial Government will be acquired for it on payment of compensation [Para. *9 Section C (1) Appendix A].

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* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

2. Reserved forest will be managed by the Provincial Government. In questions of actual management including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the Hill people should be taken into account (Para. *10).

3. On account of its disastrous effects upon the forest, rainfall and other climatic features, *jhuming* should be discouraged and stopped wherever possible but the initiative for this should come from the tribes themselves and the control of *jhuming* should be left to the local councils [Para. *11 and Section C. of Appendix A].

4. All social law and custom is left to be controlled or regulated by the tribes [Para. *12 and Section C (2) of Appendix A]. All criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and the Code of Criminal Procedure will not apply to such cases. As regards the serious offences punishable with imprisonment of five years or more they should be tried henceforth regularly under the Criminal Procedure Code. To try such cases, powers should be conferred by the Provincial Government wherever suitable upon tribal councils or courts set up by the district councils themselves.

All ordinary civil suits should be disposed of by tribal courts and local councils may have full powers to deal with them including appeal and revision.

Where non-tribals are involved, civil or criminal cases should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing circuit magistrates or judges [Para. *12 Sections D & F of Appendix A].

5. The District Councils should have powers of management over primary schools, dispensaries and other institutions which normally come under the scope of local self-governing institutions in the plains. They should have full control over primary education. As regards secondary school education, there should be some integration with the general system of the province and it is left open to the Provincial Government to entrust local councils with responsibility for secondary schools wherever they find this suitable [Para. *13 and Section E of Appendix A].

For the Mikir and North Cachar Hills the District or Sub Divisional Officer, as the case may be, should be ex-officio President of the local council with powers, subject to the control of the Government of Assam, to modify or annual resolutions or decisions of the local councils and to issue such instructions as may be necessary [Para. *13 and Section B (5) of Appendix A].

6. Certain taxes and financial powers should be allocated to the councils. They should have all the powers which local bodies in regulation districts enjoy and in addition they should have powers to impose house tax or poll tax, land revenue and levies arising out of the powers of management of village forest [Section *H of Appendix A and Para. 14 (a)].

Statutory provision for a fixed proportion of provincial funds to be spent on the hill districts is not considered practicable. A separate financial statement for each hill district showing the revenue derived from the district and the expenditure proposed on it is recommended. The framing of a suitable programme of development should be enjoyed either by statute or by Instrument of Instructions [Section *M of Appendix A and Para. 14 (b)].

* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

It is quite clear that the urgent requirements of the hill districts by way of expenditure on development schemes are beyond the resources of the Provincial Government. The development of the hill-districts should be as much the concern of the Federal Government as the Provincial Government. Financial assistance should be provided by the Federation to meet the deficit in the ordinary administration on the basis of the average deficit during the past three years and the cost of development schemes should also be borne by the Central Exchequer [Section *N of Appendix A and Para. 14 (c)].

The claim of the hill district councils for assistance from general provincial revenues to the extent that they are unable to raise the necessary finances within their own powers is recognised [Para. 14 (d)].

7. If local councils decide by a majority of three-fourths of their members to licence money lenders or traders they should have powers to require money-lenders and professional dealers from outside to take out licences [Para. *15 and Section J of Appendix A].

8. The management of mineral resources should be centralised in the hands of the Provincial Government but the right of the district councils to a fair share of the revenues is recognised. No licence or lease shall be given by the Provincial Government except in consultation with the local Council. If there is no agreement between the Provincial Government and the district Council regarding the share of the revenue, the Governor will decide the matter in his discretion [Para. *16 and Section 1 of Appendix A].

9. Provincial legislation which deals with the subjects in which the hill councils have legislative powers will not apply to the hill districts. Legislation prohibiting the consumption of non-distilled liquors like Zu will also not apply; the district council may however apply the legislation [Para. *17 and Section L of Appendix A].

10. It is necessary to provide for the creation of regional councils for the different tribes inhabiting an autonomous district if they so desire. Regional councils have powers limited to their customary law and the management of lands and villages and courts. Regional councils may delegate their powers to the district councils [Para. *18 and Section B (4) of Appendix A].

11. The Governor is empowered to set aside any act or resolution of the council if the safety of the country is prejudiced and to take such action as may be necessary including dissolution of the local councils subject to the approval of the legislature. The Governor is also given powers to dissolve the council if gross mismanagement is reported by a commission [Para. *19 and Sections Q and R of Appendix A].

12. The Central Government should continue to administer the Frontier Tracts and Tribal Area with the Government of Assam as its agent until administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over by the Provincial Government with the approval of the Federal Government [Section *P of Appendix A and Para. 20 (a)].

The pace of extending administration should be greatly accelerated and separate officers appointed for the Lohit Valley, the Siang Valley and the Naga Tribal Area [Para. *20 (a)].

The Lakhimpur Frontier Tract should be attached to the regular administration of the district. The case of the portion of the Lakhimpur Frontier Tract recently included in the Tirap Frontier Tract should be examined by the Provincial Government with a view to a decision whether it could immediately be brought under provincial administration. A similar examination of the

* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

position in the plains portions of the Sadiya Frontier Tract is recommended. The portion of the Balipara Frontier Tract around Charduar should also be subject to a similar examination [Para. *20 (b)].

Posa payment should be continued [Para. *20 (c)].

13. The excluded areas other than the Frontier Tracts should be enfranchised immediately and restrictions on the franchise in the Garo and Mikir Hills should be removed and adult franchise introduced [Para. *21 (a) and Section B (1) of Appendix A].

Weightage is not considered necessary but the hill districts should be represented in the provincial legislature in proportion not less than what is due on their population even if this involves a certain weightage in rounding off. The total number of representatives for the hills thus arrived at [See para. 21 (b)] should not be taken into account in determining the number of representatives to the provincial legislature from the rest of Assam [Para. 21 (b) and Section K of Appendix A].

The total population of the hill districts instifies a seat for the hill tribes in the Federal Legislature on the scale proposed in Section *13 (c) of the Draft Union Constitution [Para. *21 (c)].

Joint electorate is recommended but constituencies are confined to the autonomous districts. Reservation of seats, in view of this restriction, is not necessary [Para. *21 (d) and Section K (3) of Appendix A].

Non-tribals should not be eligible for election from hill constituencies except in the constituency which includes the Municipality and Cantonment of Shillong [Para. *21 (e) and Section K (8) of Appendix A].

14. Representation for the hills in the Ministry should be guaranteed by statutory provision if possible or at least by a suitable instruction in the instrument of Instructions or corresponding provision [Para. *22—See also Section O (3) of Appendix A].

15. Non-tribal officials should not be barred from serving in the hills but they should be selected with care if posted to the hills. The appointment of a due proportion of hill people in the services should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government [Para. *23].

16. A commission may be appointed at any time or permanently to enable the Government to watch the progress of development plans or to examine any particular aspects of the administration [Para. *24 and Section O (i) of Appendix A].

17. Plains tribals number 1·6 million. Their case for special representation and safeguards should be considered by the Minorities Sub-Committee [Para. *25].

18. The question of altering boundaries so as to bring the people of the same tribe under a common administration should be considered by the Provincial Government. The Barpathar and Sarupathar Mouzas included in the Mikir Hills should be included in the regularly administered areas henceforth [Para. *26].

19. Non-tribal residents may be provided with representation in the local councils if they are sufficiently numerous. For this purpose non-tribal constituencies may be formed if justified and if the population is not below 500 [Para. *27 and Section B (2) of Appendix A].

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* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

20. Provincial councils should be set up by the Governor of Assam after consulting such local organisations as exist. These provisional councils which will be for one year will have powers to frame their own constitution and rules for the future [Para. *29 and Transitional Provisions of Appendix A also].

* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

APPENDIX D

[Annexure I]

CONSTITUENT ASSEMBLY OF INDIA

EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE [VOLUME I (REPORT)]

Sub-committee

1. Shri A. V. Thakkar—*Chairman.*

Members:

2. Shri Jaipal Singh.
3. Shri Devendra Nath Samanta.
4. Shri Phul Bhanu Shah.
5. The Honourable Shri Jagjivan Ram.
6. The Honourable Dr. Profulla Chandra Ghosh.
7. Shri Raj Krushna Bose.

Co-opted Members:

8. Shri Khetramani Panda (Phulbani Area).
9. Shri Sadasiv Tripathi (Orissa P. E. Areas).
10. Shri Kodanda Ramiah (Madras P. E. Areas).
11. Shri Sneha Kumar Chakma (Chittagong Hill Tracts).
12. Shri Damber Singh Gurung (Darjeeling District).

Secretary:

13. Mr. R. K. Ramadhyani, I.C.S.

[Annexure II]

APPENDIX D

From

THE CHAIRMAN, EXCLUDED & PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE.

To

THE CHAIRMAN, ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS, etc.

SIR,

I have the honour to submit herewith the Report of my Sub-Committee for the Excluded and Partially Excluded Areas of Provinces other than Assam. We have visited the Provinces of Madras, Bombay, Bengal, Central Provinces and Orissa, and in regard to these Provinces our recommendations may be taken as final. We have yet to visit Bihar and the United Provinces and to examine certain witnesses from the Punjab. In respect of these Provinces, the Report may kindly be treated as provisional. Our final Report is expected to be ready by the end of September.

I have the honour to be,
SIR,
Your most obedient servant,
A. V. THAKKAR,
Chairman,
Excluded & Partially Excluded Areas
(other than Assam) Sub-Committee.

NEW DELHI;
The 18th August 1947.

[Annexure III]

APPENDIX D

INTERIM REPORT OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE OF THE ADVISORY COMMITTEE (CONSTITUENT ASSEMBLY OF INDIA).

1. INTRODUCTORY—

Appendix A* shows the excluded and partially excluded areas for which we are required to submit a scheme of administration. Appendix B* contains certain statistical information and the thirteenth schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936, which shows the different tribes classed as backward, and among these tribes are to be found the inhabitants of the excluded and partially excluded areas. In determining the areas to be classified as excluded or partially excluded, the Secretary of State for India issued instructions that exclusion must be based upon strict necessity and must be as limited as possible in scope consistently with the needs of the aboriginal population. As regards partial exclusion, he considered that *prima facie* any areas containing a preponderance of aborigines or very backward people which was of sufficient size to make possible the application to it of special legislation and which was susceptible, without inconvenience, of special administrative treatment should be partially excluded. The Government of India in making recommendations for partial exclusion kept in view the possibility of obtaining convenient blocks of territory with readily recognisable boundaries susceptible of special administrative treatment without inconvenience. Thus, the excluded and partially excluded areas are well defined areas populated either predominantly or to a considerable extent by aboriginals. The excluded and partially excluded areas, however, do not by any means cover the entire population of tribal origin, and in many cases represent only a comparatively small proportion of the aboriginal population, the rest of them being scattered over non-excluded areas. As an example, in the C.P., out of 299 millions of tribals of all religions, only 8·3 lakhs live in the partially excluded areas. With the exception of the Mandla District, which is a partially excluded area and contains 60·5 per cent of tribals, Betul and Chhindwara districts which include partially excluded areas and contain 38·4 and 38·3 respectively of tribals, the tribals are scattered all over the province and comprise almost a fifth of the population in some districts. This kind of intermingling is prominently noticeable in Bombay and Bengal and to some extent in other provinces also. In Bengal notably, the tribal population of the excluded areas is but a small fraction of the total tribal population of the province. A common feature of the partially excluded areas is that they are generally located in the out of the way and hilly tracts, and it is in these areas that concentrations of aboriginal population may be found. In the non-excluded areas although small blocks of them can be distinguished, notably in the Madras Presidency, elsewhere, they are interspersed with the rest of the population and are sometimes hardly distinguishable from the general population. Although our terms of reference strictly require us to report on the excluded areas, the total population of tribals in the non-excluded portions of British India not including Assam comes to about 5·5 millions, and we consider therefore that our recommendations should not altogether leave out of consideration such a large population who in many

* Reference to Appendix is to Appendix in the original report.

respects are in a very backward condition. We have felt it therefore necessary to recommend that the whole tribal population should be treated as a minority community for the welfare of whom certain special measures are necessary. Bearing this in mind, we proceed to discuss the general features of the tribal population in the different provinces.

2. **THE EXCLUDED AREAS—**

The excluded areas are few in number and consist of the islands of the Laccadive group on the West Coast of Madras, the Chittagong Hill Tracts in Bengal and the Waziris of Spiti and Lahoul in the Punjab. Of these tracts, the West Coast Islands and the Waziris of the Punjab are isolated from the rest of the province on account of their geographical position and the impossibility of communicating with them during a part of the year. The West Coast islands are cut off from the mainland for several months during the monsoon. Similarly, the Punjab Waziris are isolated during the winter when snow blocks the passes. Inaccessibility of these areas is largely responsible for their exclusion as well as for the backward condition of their inhabitants. The position in these areas is briefly given below:—

(a) **Madras.**—The islands may be considered to fall in three divisions, the Amindivi islands opposite the South Canara coast, the Laccadives attached to Malabar and Minicoy, the southernmost of them, also attached to Malabar. The total area is about 10 square miles and the population, all Muslim, 18,355. The Minicoy islanders are of Sinhalese origin while the inhabitants of the others are akin to the Mapillah of Malabar. The economy of the islands is based on the coconut palm and the produce (coir production is a whole family job) is exchanged for rice and other necessities. The administration is carried on largely by customary laws and special regulations. An amin, or monegar (Amindivi) with powers to try petty criminal and civil cases is the official immediately in contact with the islanders and the amin is in fact selected from the islanders. In the Minicoy island, literacy is said to be cent per cent; in the others, it is negligible. There is no appreciable intercourse between the islands of the three groups and their geographical position necessitates separate treatment. While they are located in a strategic position, we understand that the islands are not suitable for naval stations as they are coral islands and there is difficulty in getting fresh water. Hitherto, they have been administered practically in the manner in which relations were started with them in the days of John Company. Rs. 2 lakhs are spent, partly by way of doles including gifts of combs and mirrors, on the visits of the Collector or other official to the islands, but no attempt seems to have been made to increase intercourse between the islands and the mainland.

(b) **Punjab.**—The excluded area consists of Spiti and Lahoul with an area of 2,931 and 1,764 square miles respectively. Spiti has a population of only 3,700 and Lahoul about 9,000 (1941). The people are of Tibetan origin and Buddhists. The main difficulty about the areas is the difficulty of communication as the passes leading to them are blocked by snow in the winter.

The Provincial Government have now come to the conclusion that Lahoul need no longer be considered as excluded area and should be brought under the general system of administration.

The cultivation of *kuth* has brought some economic prosperity to this area and many Lahoulis have taken to trade also. Spiti is still economically in a backward condition and the schools there are not flourishing. Spiti has still very little of the contact with the plains which Lahoul has. Several agrarian laws have not been applied to Spiti particularly though the most important enactments are now in force without modification.

(c) **Bengal.**—The Chittagong Hill Tracts on the other hand, are not inhabited by a population of Burmese and tribal extraction. They cover an area of about 5,000 square miles and contain a total population of 247,053, mostly Buddhists. In 1941, there were 9,395 literates including 622 females among the tribes out of a population of 233,392. There are 154 schools and a High School at Rangamati. There is a good deal of contact with the plains people in the western portion of the tract, but the eastern portion towards the Lushai Hills and the Burmese border is more primitive.

Jhuming cultivation is practised almost universally and it would appear that there are considerable difficulties in the way of terraced or wet cultivation on account of the friable nature of the hill sides and the difficulty of irrigation. Some settled cultivation also exists and it may happen that a family does both kinds of cultivation. Both plough rent and jhum tax are levied. Pressure on the land is increasing and the tribes are greatly apprehensive of encroachment by outsiders.

Weaving and tapestry is a common household occupation but cannot be said to be a cottage industry though it has potentialities in that direction. The district is deficit to the extent of about Rs. 2 lakhs.

The special feature of the Chittagong Hill Tracts are the Chiefs, the Chakma Raja, the Bohmong and Mong Raja. The tract is divided into three circles, representing the jurisdiction of the Chief. The Chakma circle is the largest and is 2,409 square miles ; the Bohmong and Mong circles are 1,935 and 704 square miles respectively. The Chief have certain magisterial and appellate powers and out of the *jhum* tax of Rs. 6 per family. Rs. 2-8-0 goes to the Chief, Rs. 2-4-0 to the headman and Rs. 1-4-0 to the Government. On the ground that they are really tributary powers, the Chiefs are claiming the status of Indian States and desire that three States corresponding to the circles should be set up. It is claimed that before the *jhum* tax was imposed there was a capitation or family tax and that the right to levy this tax was a symbol of sovereignty. In 1928, a report on the position of the chiefs was submitted by Mr. Mills who recommended that the chiefs should be relieved of the collection of *jhum* tax and should also be relieved of their magisterial duties, the powers of Honorary Magistrates being conferred on them if they were proved fit. His idea was that "they were the leaders of their people and in that lay their value" and they should therefore be consulted in all important matters of the administration. Their position and future is a matter of some importance and needs careful examination by the Provincial Government. We do not feel that we can express a carefully considered opinion.

Now that Bengal is to be partitioned, the future administration of the Hill Tracts appears to lie with Assam. The Lushai Hills form in part the hinterland of this district and though communications to the east are not easy, they are not more difficult than with Chittagong. The Karnafuli provides a waterway to Demagiri which is connected with Lungleh in the Lushai Hills. The *Chakma*, *Magh* and *Mro* of these Hills have probably their tribal origin in common with the Lushais and in any case the province of Assam is the home of many different tribes. It is obvious that the Hill Tracts should not go to East Bengal in view of its predominantly non-Muslim population. The people themselves are strongly averse to inclusion in Bengal. They desired that the area should be set up as an autonomous district.

3. **PARTIALLY EXCLUDED AREAS—**

The main feature of the Partially Excluded Areas is that they are not altogether excluded from the scope of the Provincial Ministries

like the excluded areas nor is the expenditure on them outside the scope of the legislature. In fact the administration of the areas notably of the C. P. and Bombay has not been appreciably different from the rest of the province and the Provincial Governments were in greater or less degree opposed to their exclusion. It is in the Agency Tracts of Madras and Orissa and in the Santal Parganas that a different system prevails. A brief account of the areas of each province follows :—

(a) **Madras.**—The partially excluded areas consist of the East Godavari Agency, the Polavaram taluq of West Godavari Agency. The total area is 6,792 square miles and the total population 493,006 of which about 278,000 are tribal, and 54,000 are classed as backward making a total percentage of 67·6. The tribes inhabiting these tracts are Koya, Koya Dora, Hill Reddy, Dombo, Kondh and others. The tribes are pretty backward on the whole and do podu (shifting cultivation) largely. Except manual labour they have no non-agricultural occupations worth mentioning. There are special agency rules and save for certain sections the Civil Procedure Code does not apply. Crime is scarce and the aboriginals are simple and truthful. The mechanism of justice therefore needs to be a simple one.

There are no local self-governing bodies and tribal panchayats do not seem to be fit for work other than the decision of petty disputes. The toddy palm plays a large part in the life of aboriginals. They have suffered in the past through exploitation by moneylenders and landlords and incidents like the Rampa rebellion have occurred in the areas. Lisencing of moneylenders, as agreed by the Collector of West Godavari, is probably a definite need of these parts in addition to the prevention of acquisition of land by non-aborigines.

Yaws and malaria are very common in these parts.

(b) **Bombay.**—The partially excluded areas which are to be found in the districts of West Khandesh, East Khandesh, Nasik, Thana, Broach and Panch Mahals cover an area of 6,697 square miles and contain a population of 1,125,471 of which 663,628 or 58·9 per cent are tribals. The tribes are largely Bhil, Varli, Kokna, Thakur and Katkari. In 1935, the Government of Bombay were not in favour of exclusion of any area except the Mewasi Chiefs Estates and the Akrani Mahal in the West Khandesh District on the ground that the administration of these areas was all along carried on in the same manner as the other tracts and that there were local self-governing institutions in the areas. The Akrani Mahl in the Satpura Hills is an almost purely Bhil area and probably the one with the least contact with the plains.

In 1937, the Government of Bombay appointed Mr. D. Symington to conduct a special enquiry into the conditions prevailing in the aboriginal areas. Mr. Symington pointed out that the local boards were largely or even exclusively run by non-Bhil elected members and opined that it was not a mere question of providing seats for the hill tribes but that these people were not sufficiently educated and advanced either to use their votes sensibly or to produce from among themselves enough representatives capable of looking after their interests intelligently on local boards. "They are not only illiterate but also ignorant of everything outside their daily run. They are contemptuous of education which they regard as a degrading and senseless waste of time. They have more faith in witch-doctors than in pharmacopoeia. They live near the border line of starvation. They are inveterate drunkards. It was not surprising that they take no interest in the local boards elections or local board administra-

tion. He also expressed the opinion that the salvation of the aboriginal lay in protecting him from exploitation by the moneylenders who were gradually depriving him of his land, and stopping the drink habit. Giving evidence before us, he reiterated the view that elections would be completely useless so far as these people were concerned.

Among the Thadvi Bhils (Muslims) there is a Sub-Judge. Among the half dozen graduates from the Bhils there is Mr. Natwadkar, the M.L.A. from West Khandesh and there is a lady from the Panch Mahals. The demand for education is however becoming very keen.

In the Warli areas of the Thana District visited by us practically all the land had been taken up by non-tribals and the tribals were reduced to the condition of landless serfs. The Bombay Government have in fact now found it necessary to pass special legislation to prevent alienation of land. On account of the acquisition of all the land by a few people, the land system in this tract has been virtually transformed from a ryotwari system to a system similar to the malguzari system of the Central Provinces.

(c) **Central Provinces & Berar.**—The partially excluded areas, of which Mandla District is the largest unit, contain only 833,143 tribals out of a total tribal population of nearly 3 millions. The Gond (including Maria and Pardhan) is the main tribe in the C. P. and the Korku in the Melghat are prominent in Berar. Although backward and adhering largely to their own customs and ways in the areas where they are still most numerous, the tribes have in appreciable degree assimilated the life of the rest of the population and tribal institutions are either weak or practically non-existent. Mostly the tribes have taken to settled cultivation and there is little bewar or dahia in the province. Of handicrafts and cottage industries, however, there is next to nothing and this is the great weakness of the aboriginal economy. The aboriginal is given to drink but opinion in favour of temperance or prohibition seems to be gaining ground.

The partially excluded areas are, with hardly any exception, administered in the same manner as the other districts. The C. P. Land Alienation Act of 1916 is the only notable legislation enacted specially for the protection of the aboriginals and restricts the transfer of agricultural land from aboriginal to non-aboriginal classes. In 1940, when the C. P. Tenancy Act was amended to confer rights of alienation on certain classes of tenants, the application of the amending Act to the partially excluded areas was made subject to certain modifications designed to secure that unscrupulous landlords would not manipulate to their own advantage the complicated provisions of the Act.

A special enquiry into the problems of the aboriginals was ordered by the C. P. Government and a report was submitted by Mr. W. V. Grigson in 1942. Among the points made by Mr. Grigson were the weakness of the tribal representatives in the local boards and the need for provisions to prevent the application of legislation to aboriginal areas except after special consideration. Mr. Grigson was also examined by us as a witness and expressed himself in favour of a system of indirect election for the aboriginals. Opinion of a number of C.P. witnesses was not in favour of reserved representation for the aboriginals in proportion to their population. Some witnesses preferred nomination out of a panel submitted by the District Officers. At present there are three tribal members in the Legislature although only one seat is reserved.

The Provincial Government have now created a special Department and inaugurated a scheme of development of the aboriginal areas in which multipurpose co-operative societies play a prominent part. Opinion in the

C.P. (as in Bombay) was strongly in favour of boarding schools with free meals as the only way of making schooling acceptable to the aboriginals.

(d) **Orissa.**—This province contains a partially excluded area of nearly 20,000 sq. miles, *i.e.*, almost two-thirds of the province is partially excluded. The partially excluded area includes the portions of the Madras Agency Tracts transferred to Orissa, the Khondmals of the former Angul District and the Sambalpur District which was formerly in the C. P. The total tribal population of the province is 1,721,006 of which 1,560,104 are found in the partially excluded areas. The tribes inhabiting this province are among the most backward in the whole of India. The Bonda Porja, Gadaba, Kondh and Savara are among the most important of them. In 1939 the Orissa Government appointed a special committee to make recommendations for the partially excluded areas (Thakkar Committee) which found that some tracts were too backward to administer even local boards. Although they have representatives in the legislature, four of the five reserved seats are filled in by nomination and some of the nominated members have to be non-tribals. The percentage of literacy in the Agency Tracts is about one per cent. A Backward Classes Welfare Department has recently been set up. The Thakkar Committee made a number of important recommendations which could not be given effect to during the war and are now being taken up.

Apart from the Khondmals which are now attached to the Ganjam Agency, the Angul Sub-division which is a partially excluded area has only 13,308 tribals who form 8 per cent of its population. The Thakkar Committee recommended the administration of this area as a regular district and pointed out that the Angul Laws Regulation is no longer suited to the advanced condition of the people. Even in 1935, it was stated by the Orissa Government that the area was so advanced that it should be possible within a few years to place it on a level with the normal districts (para. 49, Recommendations of Provincial Governments and the Government of India, Indian Reprint).

The District of Sambalpur was made a partially excluded area largely on account of the special system of that district, *viz.*, the distinct system of revenue and village administration. The district was formerly part of the C. P. and the C. P. Revenue Laws and type of village administration were in force. The aboriginal population of the district is 252,095 and constitutes 19·6 per cent. but most of these tribals seem to have assimilated the customs and culture of the surrounding Hindu population. The administration of the district though differing from the rest of Orissa was not radically different from the administration of the C. P. plains districts until 1921. Three of the Zamindaris of Sambalpur had been declared scheduled districts under the Act of 1874, but with the exception of the Insolvency Act of 1920 all other legislation was applied to the district. The Thakkar Committee recommended (para. 397) that the district should cease to be a partially excluded area and should be treated as a normally administered area. The Committee however considered (para. 402) that some sort of protection was still needed for the aboriginals of that district and recommended certain special measures for the protection of the land of the aboriginals (para. 403). The tribes in this district consist mainly of Gond (102,765), Kondh, Kharia and Savara. They are concentrated largely in the Sadar Sub-division of the district. Literacy among them is not up to the level of the Scheduled Castes of the District and amounts to only about 2 per cent. They however take part in elections and in the Sambalpur Sadar constituency there is a reserved seat for the backward tribes. This is the only one of the five tribal seats in the province which is filled by election.

The question of representation for the Orissa tribes presents somewhat of a problem. Local officials had serious doubts as to the possibility of finding suitable representatives from among them, at any rate in proportion to their population. The Provincial Government have similar hesitations. In their factual memorandum (page. 28*) they have recommended that local bodies should be partly elected and partly nominated. For the Provincial Legislature, "a specific number of seats should be reserved for aboriginal members in general constituencies; but the aboriginal members should be elected to these seats by a system of indirect or group election."

(e) **Bengal.**—The partially excluded areas of Bengal consist of the District of Darjeeling and certain police station areas in the Mymensingh district which border on the Garo Hills of Assam.

The Darjeeling District is shown to contain 141,301 tribes out of a total population of 376,369 in 1941. The tribal population of the district seems to consist largely of labour employed in the tea gardens and some Lepcha and Bhotia. Actually, the latter are only about 20,000 in number. The prominent community in Darjeeling is the Gurkha or Nepalese community which numbers about 2½ lakhs. A good many are employed in the tea gardens and the local police force also contains a high proportion of them. The Gurkha are not regarded as a backward tribe and the thirteenth schedule to the Govt. of India (Legislative Assemblies) Order does not include Gurkha. They feel however neglected so far as other ranks of Government service are concerned and in the trade and business of the place, the Marwari has the upper hand. On the other hand, the small community of Lepcha (12,000) finds itself dominated by the Gurkha and one of the complaints is that their land (the Lepcha claim to be the original inhabitants) has been gradually taken away from them by Nepalese immigrants.

The partial exclusion of Darjeeling was recommended by the Govt. of Bengal not because it was considered as a backward area but because it was felt that safeguards were necessary in the interests of the hill people. The fact that Darjeeling was the summer capital of the Government of Bengal and the existence of European tea-planters may have played some little part. The 1941 census shows that even among the tribals (mostly tea garden coolies) there was 16,450 literates out of a total population of 141,301 and 2,571 of these were women.

The local bodies (Municipality and District Board) are not wholly elected bodies and the Deputy Commissioner is the President of the Municipality. Undoubtedly the land the hill tribes needs to be protected from the maw of money lenders but there is little case otherwise for continuing partial exclusion or special administration.

The Gurkha League desires that there should be an elected Advisory Council in the District so that the interests of the Gurkhas in representation in the services, in the land and industry of the district may be protected. They have also sponsored a movement for union with Assam where there is a strong Gurkha element.

As regards the partially excluded portion of the Mymensingh District, there are about 49,000 Garo in all but according to the census, some of the *thanas* contain very few tribes. The provincial Govt. were opposed to its partial exclusion in 1935. They pointed out that no special measures had been hitherto necessary to protect the tribe and had no indication at any time that the existing administrative system had worked inequitably for them. It would appear that the partial exclusion of this area was consequential upon the exclusion of the Garo Hills District in

* Reference to page is to page in the original report.

Assam. The Garo of this area are keenly desirous of being united with the Garo of Assam under a common administration, and in view of the division of Bengal there is a good case for rectification of the boundary, *i.e.* to include the Garo area in the Garo Hills Districts of Assam. The majority of the population of the partially excluded area (5·94 lakhs) consists however of non-tribals and it will be necessary therefore, to draw a fresh boundary.

(f) **Bihar.**—The Partially Excluded Areas of this province extend over the enormous area of 32,458 sq. miles comprising the whole of Chota Nagpur division and the Santhal Parganas District. The total population of the area is 9,750,846 and nearly 4.5 million of these are tribal people consisting of Santhal, Oraon, Munda, Ho, Bhumij and other lesser tribes of the Kolarian family. Although the general level of literacy and development in this area is lower than that of the non-aboriginal population, the tribes people here are rapidly advancing and quite a number of people in the learned professions may be found among the Munda and Oraon. Local self-governing institutions exist, and there is no question that the area would be able to take part intelligently in the administration of the province. The main feature of this area may be summarized in the words of the Provincial Government in recommending partial exclusion: "The Special Tenancy Laws in Chota Nagpur, the Santhal Parganas, *Sambalpur and *Angul are the bulwark of the backward peoples. The legislatures of the future would have the power to amend, modify or even repeal those laws and the only safeguard against legislative action detrimental to the interests of backward peoples is the power of the Governor to refuse assent. ....The importance of these special Tenancy Laws to the aboriginals cannot be overstressed. The history of the Santhal Parganas and Chota Nagpur was one of continuous exploitation and dispossession of the aboriginals punctuated by disorder and even rebellion until special and adequate protection was given. In the fringe areas, such as Manbhum, where the non-aboriginals are in a majority, the aboriginal element would probably have been driven from the land long ago but for the protection given by tenancy laws. ....The fate of the aboriginal where he has been unprotected has usually been to lose his land....." In the Santhal Parganas, legislation since 1855 has been mainly by means of special regulations framed by the Governor-General-in-Council. The main function of these regulations was to regulate *inter alia* the agrarian law, the constitution of courts and their procedure, moneylending and the village police. Except in the most important cases the jurisdiction of the High Court was excluded and judicial procedure simplified. In the Kolhanpir of the Singhbhum District also, the Civil Procedure Code was replaced by simplified rules but generally speaking, the laws of the rest of the province operate in Chota Nagpur. For a detailed account, the Factual Memorandum of the Provincial Government may be referred to (pages †97-98, Excluded and Partially Excluded Areas—I). Since 1937, section 92 (2) of the Government of India Act has been made use of to frame some special regulations notably for the Santhal Parganas.

The population of Chota Nagpur and the Santhal Parganas is rather mixed and except in the Ranchi District, the Singhbhum District and the Santhal Parganas, the tribal population are in a minority. In their Factual Memorandum, the Bihar Government have pointed out that a comparison between the figures of 1941 and 1931 census shows that there

* Now in Orissa. † References to pages are to pages in the original reports.

is room for doubting the accuracy of the figures of the 1941 census. Recently an agitation has been started for the formation of a separate Chota Nagpur Province on the ground that this land is the land of the aboriginal residents who are distinct from the inhabitants of the plains in many ways. Taken as a whole, the tribals form only 45.6 per cent of the total population of the Partially Excluded Areas and in Chota Nagpur they constitute 44.2 per cent of the population. Only in Ranchi (70 per cent), Singhbhum (58·4 per cent) and Santhal Parganas (50·6 per cent) are they in anything like a majority. The creation of a separate province is a matter outside the scope of our enquiry and we do not find that this is in fact necessary for the satisfactory administration of the tribals.

(g) **United Provinces.**—The partially excluded areas are the Pargana inhabited by the Jaunsari tribes in the north and the portion of the Mirzapur District below the Kaimur Range inhabited by mixed tribes of Chota Nagpur and Central India. The area is 483 sq. miles in the Dehra Dun District and 1,766 sq. miles in the Mirzapur District. The total population of both areas is about 200,000.

The Jaunsar Bawar Pargana forms the watershed between the Jumna and the Tons. The country is hilly and offers little land for cultivation. It appears that most of the cultivable land is held by Brahmins and Rajputs and that the Koltas (Scheduled Caste) are debarred from possession of land according to the village Wazibul-arz and occupy practically the position of serfs. Though the great majority of the people are Hindus, polyandry and special systems of divorce are in vogue since ancient times. Although the area is under the criminal jurisdiction of the High Court a simplified system of criminal, civil and revenue administration is followed and except in Chakrata Cantonment, regular police are not employed. For civil law, the Commissioner, Meerut, acts as a High Court. The Excise and Opium Acts have not been extended to the area and opium cultivation is permitted. There is great illiteracy in the area and the administration will have to be suited to the lift of the inhabitants. In Khat Haripur Bias at the foot of the hills however conditions are different and approximate to those in the plains. The Khat Haripur Bias Tenants Protection Regulation of 1940 has afforded some protection to the tenants. The Provincial Government are of the view that this Khat should be included in the Dehra Dun Tahsil. Though the area is enfranchised and is included in the Dehra Dun rural constituency, it is considered incapable of sending representatives to the legislature.

As regards the Mirzapur District, the excluded area consists of four parganas of which only the Agori and Bijaigarh parganas have a concentration of aboriginals. The population consists of a number of tribes having affinities to the tribes in the neighbouring provinces from which they have come. There is no strong tribal life left among them. Their occupations are said to be those usually followed by the Scheduled Castes and in their religious and social customs they are similar to low-caste Hindus.

The land revenue system of this area is different from the rest of the Province and is based on a plough tax. The non-agricultural classes are gradually acquiring land from the aboriginal. The Tahsildars of the tract who exercise magisterial functions are Munsifs also. Except in

relation to suits of succession and divorce, the Court of the Commissioner is the highest court of appeal in civil suits. The area is under the jurisdiction of the District Board of Mirzapur.

The Provincial Government are of the view that there is no justification for this area being treated differently from the rest of the province and that normal administration should be extended to it immediately.

4. **POLITICAL EXPERIENCE—**

The people of the excluded areas have no experience of local self-governing institutions of the modern or statutory type and are of course not represented in the legislature. The management of a Local Board is perhaps likely to be a much bigger undertaking for the people of these areas than the mere election of a representative to the legislature and the establishment of such bodies needs perhaps a period of official guidance and control, particularly in areas like the Madras islands. The partially excluded areas on the other hand are all included in electoral constituencies of the provincial legislatures and with the exception of the Agency tracts of Madras and Orissa,* the Santal Parganas and Jaunsar Bawar, are covered by local boards also. There are certain reserved constituencies, *viz.*, Bihar 7, Orissa 5, Madras 1, Bombay 1 and C. P. 1. In Orissa, four of the five members are selected by nomination. Unlike Assam, no reservation of seats had been made for tribals of the plains or non-excluded areas and these vote along with general Voters. In Bombay, C. P. and Chota Nagpur, the tribals though reported to be apathetic and showed aside by non-tribals, have known, at least nominally, such bodies as local-boards. Nevertheless it is likely to take some time before there is sufficient interest in these bodies and probably interest in local self-government will have to be built up from the village stage. Although as shown by Mr. Grigson in his report, the tribals cast their vote as copiously as others, they have yet to learn to utilise its powers to their own advantage.

5. **EFFECTS OF EXCLUSION—**

Although exclusion or partial exclusion has been in force for a number of years now, the benefits which the areas have derived from it are not particularly noticeable. In the case of the excluded areas, the sole responsibility for the administration has lain upon the Governor and the revenues earmarked for these areas have been outside the vote of the provincial legislature. No definite programme for the development of the excluded areas with a view to removing the disability of exclusion has been followed. The introduction of *kuth* cultivation in Lahaul has brought it some economic prosperity but the West Coast islands are probably no better off than they were ten or twelve years ago, and in the Chittagong Hill Tracts no great impetus to enlightenment is perceptible. On the other hand, in the partially excluded areas also little improvement is as yet visible although in Bombay an inquiry into the conditions of the aboriginals was started as early as 1937. A Backward Class Department and Board have also been functioning in Bombay. Other provinces have since taken the cue and welfare work now seems to be forging ahead but it is perhaps the general interest in the backward classes which is responsible rather than the system of partial exclusion as such. The remarks of the Orissa Government are of interest: "The system of partial exclusion has also been a most unsatisfactory constitutional device. In matters of administration of the partially excluded

*In the Koraput District there is a District Board with the Collector as President.

areas, the Ministers tender advice to the Governor, with whom the ultimate responsibility for the good Government of these areas rests. He may accept or reject such advice. The system suffers from a fundamental defect; the responsibility is shared between the Governor, and the Ministry answerable to the people of this country or their elected representatives." No less responsible is perhaps the fact that the representatives of the partially excluded areas have not been capable of bringing sufficient pressure and influence to bear on the Ministry. Further, some of the partially excluded areas which constitute small pockets in large districts and constituencies could apparently be lost sight of and their interests subordinated to those of the larger areas in which they were contained. Some of the C. P. excluded areas situated in the Chhindwara and Bilaspur districts may be particularly noticed in this connection. They constitute comparatively small islands of partial exclusion which have little voice in a large constituency. The greatest weakness of the scheme of partial exclusion is perhaps the fact that it left areas weakly or only nominally represented in the legislature without any special financial provisions. Whatever the reasons may be, the conclusion to be drawn from the state of affairs noticed by us is that partial exclusion or exclusion has been of very little practical value. There has been neither educational nor economic development on any appreciable scale. The object of special administration has thus not been achieved, and it is clear that if the hill tribes are to be brought up to the level of the rest of the population the strongest measures are now necessary.

6. **ATTITUDE OF THE GENERAL PUBLIC**—

One thing which we noticed in the course of our visits to the different Provinces was a considerable awakening of the public conscience in the matter of the welfare of the tribal people. The inquiries instituted in some of the Provinces have doubtless contributed to this quickening. Non-official organisations are beginning to take interest in the welfare of the tribes and the work of the Servants of India Society stands out prominently among these. The recent rising of the Warlis in Bombay Presidency has drawn attention, in a rather forcible way perhaps, to their problems. Whatever the reasons, it seems now clear that there is a general tendency to take up the question of development of the tribes people as a serious matter, but whether this by itself is sufficient to ensure the future wellbeing of the tribes is more than questionable. Most of the Provinces are far from being happily placed in the matter of funds, and the development of areas inhabited by tribes which are situated generally in hilly country is a matter which calls for a good deal of expenditure for which there are many competitors. The emergence of educated people among the tribes is as yet inadequate for the maintenance of interest in their problems.

7. **POTENTIALITIES OF THE TRIBES**—

The views of people of different points of view regarding the future administration of the hill tracts and of the tribes people themselves was found to be remarkably uniform. To begin with, there was hardly anybody who did not believe that the tribals are capable of being brought to the level of that rest of the population by means of education and contact. Wherever facilities for education and contact have been available, the tribes people have showed that their intelligence can be developed and environmental difficulties overcome. It is true that as yet there is a great deal of apathy in certain areas. Mr.

Symington's report in particular points out that the Bhils take little interest in the local boards or in education and their addiction to drink is likely to keep them in their present backward state. In the partially excluded areas of Orissa, we came across tribals who had not been any where beyond a few miles of their village or seen a motor car or a railway train. By and large however we found that there is a considerable demand for education and advancement among the tribal peoples and have no doubt that within a short time they can be brought up to a satisfactory level, if development plans are vigorously pursued.

8. **GENERAL CONCLUSIONS—**

To sum up: Both exclusion and partial exclusion have not yielded much tangible result in taking the aboriginal areas towards removal of that condition or towards economic and educational betterment. Representation of partially excluded areas in the legislature and in local bodies has been weak and ineffective and is likely to continue to be so for some time to come. Education shows definite signs of being sought after more and more but the poor economic condition of the aboriginal and the difficulty of finding suitable teachers present problems which must be over-come before illiteracy can be properly tackled. The great need of the aboriginal is protection from expropriation from his agricultural land and virtual serfdom under the moneylender.

There are certain tracts like Sambalpur and Angul in the Orissa province which need no longer be treated differently from the regularly administered districts. On the other hand areas like the Madras and the Orissa Agency tracts still need a simplified type of administration which does not expose them to the complicated machinery of ordinary law courts. Differences in social customs and practices among the tribes also need to be kept in mind.

9. **REPRESENTATION IN LEGISLATURES—**

We have pointed out at the very outset that the tribals who live in non-excluded areas form part of our problem and cannot be left out of account. In considering representation in the Legislatures we would urge that the tribes should be treated as a whole as a minority and not separately. In this regard, we would refer to a certain difference of opinion which exists among the parties interested. In Bombay the view of the Ministers and others dealing with the problem was unreservedly in favour of providing representation for the tribes as a whole by reservation of seats in a joint electorate. In Madras also a similar view found favour. In the Central Provinces, however, different views were expressed not only in respect of the method of election but also about reservation, both by officials and by Ministers. Certain district officials suggested that there should be nomination out of a panel submitted by district officials. Mr. Grigson favoured a scheme of indirect elections by means of group panchayats. The general feeling among these officials was that election was not likely in the present circumstances to produce suitable representatives. Some point was given to this by the reply of Mr. Wadiwa, a Gond pleader, who gave evidence before us, that he could not stand for election on account of the expense involved. The Ministers on the contrary seemed to have no objection to elections but were strongly opposed to reservation of seats in proportion to their population. Mr. Grigson also did not appear to favour reservation though he was of the view that if reservation was made for the scheduled castes there was no justification for not protecting the aborigi-

nal similarly: "But once we start with reservation there is the possibility of it becoming permanent." The Ministers considered that increased representation would be provided by their scheme of demarcating constituencies without the evil of creating a separatist mentality. "These tahsil areas will be delimited so that particular communities in particular areas will get an effective voice. Just as particular wards in a municipality return only a particular class or community of persons—some wards in Nagpur Municipality return only Muslim members—an Ahir ward or tahsil will return only an Ahir, a Gond tahsil will return only a Gond and so on. In this way we want to give all the sections of our people thorough and complete representation without whetting their communal appetite." As regards the other tribals who are not found in compact areas, it is asserted that they are generally dispersed in the province and not easily distinguishable from the other people. In Orissa reservation of "a specific number of seats" in general constituencies is recommended but it is considered necessary that aboriginal members should be elected to these seats by a suitable system of indirect or group election. The remarks of the Orissa Government in connection with the system of partial exclusion are relevant: "The inadequacy of representation of the aboriginal people of these areas in the legislature has also contributed to their neglect. They are not vocal nor have they any press for propaganda. They have been represented in the Assembly by five members, four nominated by the Governor and one elected from Sambalpur. As a result of this insufficient representation, the problems of these areas do not receive the attention to which their size and importance entitle them." We have given serious thought to the question and come to the conclusion that the tribals should have reserved seats in a joint electorate based on adult franchise. We do not consider the scheme of the C. P. Government adequate as it provides no safeguards for the large numbers of tribals who live in the non-excluded areas and who without reservation would have no chance of being represented in the Legislature. The case of the tribals is not essentially different from that of the Scheduled Castes and they are in fact more backward in education and in their economic condition than the Scheduled Castes. Representation in proportion to their numbers in the legislatures, even if some of them are not vocal or able to argue their case will emphasize the importance and urgency of their problems. And it is to the interest of the country to see that these original inhabitants of the Indian soil are brought up to the level of the rest so that they can contribute in due measure to the progress of the country rather than be a drag on the rest. We do not consider that the method of indirect election or nomination should be resorted to. The aboriginals have to take part in direct election some time and the sooner their training for this starts the better.

Having regard to the circumstances of the Madras island and the Punjab Excluded Areas, we recommend special representation as follows:—

Laccadive Group
Lahaul and Spiti
Amindivi Group
Minicoy

It seems clear to us that these areas cannot be included in other constituencies, nor would they be suitably represented if so included.

10. **LEGISLATION**—

(a) **Areas to be Scheduled.**—The provisions for partially excluded and excluded areas in the 1935 Constitution are designed to prevent the application of unsuitable legislation, to permit the making of special rules and regulations required for any different system of administration needed in the aboriginal areas, and for the provision of funds at the discretion of the Governor for the totally excluded areas. Although in most of the Provinces, there has been a good deal of assimilation of the tribal people to the people of the plains, yet the social system of the tribes is different from that of the plains people in a number of the partially excluded areas. In the excluded areas, of course as already pointed out, there are people like Tibetans, the Chakma, Miro and Mogh of the Chittagong Hill Tracts, the islanders of the Laccadive Islands and so on. In the partially excluded areas, the tribes of Orissa and Chhota Nagpur and even the Gonds of the C. P. and the Bhils of Bombay who have assimilated the life of the plains to a greater extent than others have different social customs. The law of inheritance and the systems of marriage and divorce are different from those of other communities. It is possible of course for the legislatures to bear these features in mind and pass different laws just as different laws have been passed for Hindus and Muslims but there are other subjects as well in which the tribes will have to be treated on a different footing. In places like the Agency Tracts, for example, the population is as yet too primitive to be able to understand or make use of the complicated procedure and law of the civil, criminal and revenue courts. We have mentioned earlier the features peculiar to the Santal Parganas and the Jaunsar Bawar Pargana. Even in the more advanced tracts of the Central Provinces of Bombay, the tribal is at a serious disadvantage on account of his poverty and ignorance and the procrastination of courts and officials and is easily victimized. This is of course true of all poor and simple rural folk, but it is clear that in the case of the aboriginal, it applies to a community found predominantly in certain areas and not to individuals. Thus a simplified system of dispensation of justice will be necessary in certain areas. There is again the question of land legislation. The land is the only thing left to the aboriginal, who does not follow non-agricultural professions to any appreciable extent as yet. In the Chhota Nagur Division different kinds of tenure have been recognized for the tribals and in any case, even where the tenure is simple and common to other areas, grant of the power of alienation to the tribals is certain to result in his gradual expropriation. We are thus led to the conclusion that it is necessary to provide that in certain areas laws of the provincial legislature which are likely to be based largely on the needs of the majority of the populations should not apply automatically, if not generally, at least in certain specified subjects. A general provision of this kind is of course a matter of convenience and would eliminate the need for the legislature to provide special clauses or saving clauses. It would also enable special consideration if the legislation is to be applied to the area. This of course involves notification of areas and we recommend provision for the purpose. We propose that the areas should be known as "Scheduled Areas" in future.

(b) **Application to Scheduled Areas.**—The next question which arises is whether any special mechanism is to be provided or whether the matter should be left to the legislature without any additional safeguard to apply legislation. The Government of Orissa have apparently thought it sufficient if the laws are specially extended by the Provincial

Government and other Governments may hold similar views. The fact that non-tribals will be in a majority in all the legislatures and the fears which the tribals entertain that their interests and special customs and circumstances may be ignored must in this context be taken into account. Doubtless they would like to feel that they themselves have a voice in the decision and that a decision is not taken by persons unacquainted or imperfectly acquainted with their special circumstances and not genuinely interested in their welfare. The feeling which prevails in this matter has been expressed thus: "Speaking purely hypothetically, it should not be possible for the member representing Chittagong to be able to oblige his constituents by getting some radical changes made to the detriment of the hill tribes, which is of local advantage to them." (Lt.-Col. Hyde, D.C. Chittagong Hill Tracts) and "Ministers may find that owing to political pressure from organised pressure groups, that it is impossible for them to give the protection which they desire to give". (Grigson, aboriginal Tribes Enquiry Officer, C.P. & Berar.)

The present system under which the Governor in his discretion applies the legislation is not likely to appeal as this principle will be regarded as undemocratic, even though the governor in future may be an elected functionary. An alternative mechanism is therefore necessary. We have considered the question in all its aspects and come to the conclusion that in respect of certain subjects, laws passed by the Provincial Legislature should not be applied to the Scheduled Areas if the Tribes Advisory Council does not consider them suitable for those areas. We have also provided that in other subjects the Provincial Government should have the power to withhold or modify legislation on the advice of the Tribes Advisory Council. (Para*. 15).

(c) **Special Subjects.**—It has been stated above that in certain subjects legislation should not apply if considered unsuitable by the Tribes Advisory Council. We consider such a definition desirable to prevent any unnecessary complication of legislative procedure or delaying of legislation. In most of the areas ordinary legislation is applicable and the policy has been and should be to apply legislation normals unless there is any special reason to the contrary. As a matter of general concern restriction seems necessary only in certain matters and we recommend that all legislation relating to (1) social matters (2) occupation of land including tenancy laws, allotment of land and setting apart of land for village purposes, and (3) village management including the establishment of village panchayats should be dealt with in this manner.

13. **CRIMINAL AND CIVIL COURTS—**

We have noticed that there are areas where the regular machinery for the disposal of criminal and civil cases is not in operation and an "Agency" system is in force. The civil procedure has in particular been substituted by a simplified procedure. We have no doubt that simplified procedure should be possible for the disposal of petty criminal and civil cases and recommended accordingly that except where the regular procedure is already in force, a simplified system should continue to be inforced. We are not however in a position to say whether the exact procedure followed at present needs modification or not.

* Reference to para. is to para. in the original report.

14. **RESERVATION IN FEDERAL LEGISLATURE—**

We have recommended reservation of seats in the Provincial Legislature. We recommend reservation in the Federal Legislature also on the basis of population in each province. On the scale contemplated in the draft Union Constitution, this would be 5 for Bihar, 3 for C. P., and 2 each for Bombay and Orissa.

15. **PROVINCIAL TRIBES ADVISORY COUNCIL—**

Most of the Provincial Governments have found it necessary to set up advisory bodies for the proper administration of the tribal areas. In our view, it is necessary that there should be a body which will keep the Provincial Government constantly in touch with the needs of the aboriginal tracts (Scheduled Areas) in particular and the tribal for such a council requires little explanation. Whatever legal machinery is set up, it is no fancy to suggest that its actual translation into practice may not be in accord with its spirit, and besides the legal machinery itself may be found defective in practice. For a number of years clearly, the development of the aboriginals will require the most meticulous care. There are many ways in which the aboriginals' interests may be neglected, and it is known that regardless of certain prohibitory rules, they are subjected to harassment at the hands of subordinate government officials and contractors. In spite of the abolition of begar, for instance, there are still a good many cases of it in fairly serious form coming to notice from time to time. The working of provincial legislation or the machinery of administration in whole or in not needs constant scrutiny and regulation. The reclamation of the tribal is not likely to be an easy matter since it is seen from experience that even where provision for local bodies exists the aboriginal requires special encouragement to take active part in it. We have also pointed out that the representation of the aboriginal in the legislature is likely to be weak for some time to come. To exercise special supervisory functions therefore and to bring to the attention of the Provincial Government from time to time the financial and other needs of the aboriginal areas, the working of development schemes, the suggestion of plans, or legislative or administrative machinery, it is necessary to provide by statute for the establishment of a Tribes Advisory Council in which the tribal element is strongly represented. There may be no objection to the advisory council being made use of for supervision of the interests of other backward classes as well. We are of the view that the establishment of an Advisory Council for the next ten years at least is necessary in the Provinces of Madras, Bombay, West Bengal, Bihar, C.P. & Berar and Orissa, and we recommend that statutory provision be made accordingly. We have referred earlier (Para. 11) to the part that the Tribes Advisory Council will play in respect of Legislation.

16. **CENTRAL COMMISSION—**

We have indicated above that unless the attention of the Government is concentrated with special emphasis on the problems of the aboriginals and the needs of the Scheduled Areas, there is little likelihood of any development. We do not intend any reflections on Provincial Governments if we remark that they may fail to take adequate interest. The provincial finances may also need to be strengthened by subventions from the Central fisc and we have in fact recommended that the Federation should come to the aid of the provinces to the extent necessary. We are of the view therefore that the Federal Government should take direct interest in the development of the tribes. We consider that it should be possible for the Federal Government to institute at any time

a special Commission to enquire into the progress of plans of development and also into the conditions of the Scheduled Areas and tribals in general. In any case, such a commission should be instituted on the expiry of ten years from the commencement of the new Constitution. We have no doubt that the provinces would welcome such a commission and we recommend that provision for its appointment should be made in the Union Constitution.

17. **CENTRAL SUBVENTIONS**—

The development of the Scheduled Areas is likely to involve heavy expenditure on account of the nature of the country and other practical difficulties. It is obvious that in the hilly tracts the construction and maintenance of roads will require a good deal of money. Most of these tracts are devoid of any attraction for officials who thus need to be specially compensated. The provision of schools, medical facilities and water supply which are dire needs will doubtless make a heavy demand on the budget. While we are clearly of the view that to the maximum possible extent the funds required for the welfare and development of these areas should be found in the provinces themselves, we feel that unless the Central Government provides the necessary assistance, some of the Provincial Governments at any rate may find it impossible to carry out schemes of improvement. We recommend therefore that for all schemes of development approved by it the Central Government should contribute, in whole or in part, funds for the implementation of the development schemes. The Central Government should also be in a position to require the Provincial Governments to draw up schemes for the Scheduled Areas. We have recommended statutory provision to this effect

18. **PROVINCIAL FUNDS**—

The main anxiety of the Scheduled Areas will centre round the attitude of the legislature in the provision of funds. These areas as already pointed out will be weakly represented and, being deficit areas, may be dealt with on the principle of he who pays more gets more. In the absence of a keen demand it is even possible that there is a diversion of revenues to the more vociferous areas. We have remarked earlier that one of the weaknesses of the system of partial exclusion is the lack of financial safeguards. There is very clearly a necessity for making the required provisions to remove this weakness. It has been suggested to us that funds for the development of the Scheduled Areas should be provided by the fixation of a statutory percentage of the provincial revenues. It may be easy to provide by statute that such and such a proportion of the Provincial revenues should be spent upon the Scheduled Areas, but there is first of all the difficulty of determining the ratio. The needs of the Scheduled Areas are great in comparison with the population and in some cases even with the extent of the tract. Secondly if a rigid statutory ratio is fixed, it may in practice be found that it is not possible to adhere to it. The framing of a budget has to take into account many factors and rigid statutory ratio is likely to cause difficulties to the Provincial Governments, apart from being perhaps ineffective in providing the real needs of the hill tracts. If a low ratio is fixed it is practically certain that the Provincial Governments will not exceed that. If a high ratio is fixed, the Provincial Government may be unable to meet it and in any case the working out of an acceptable ratio itself seems impracticable in the circumstances without a careful examination of the needs of all the different tracts. We feel consequently that no direct statutory safeguard of this nature is possible. The other possibi-

lity is that the Governor in his discretion should set apart funds and that these funds should be outside the vote of the legislature. We feel that such a provision is likely to be repugnant to the provincial legislature.

We recommend however that the revenues derived from and the expenses incurred on the Scheduled Areas from the provincial budget should be shown separately so as to prevent the needs of these areas being overlooked through incorporation in the general items Such a separate statement will of course afford a better opportunity for scrutiny and criticism.

19. **GOVERNOR'S RESPONSIBILITY—**

In connection with financial safeguards the view was expressed that the formulation of a plan of improvement affords sufficient guarantee for the expenditure of funds. We are of the view that in the provisions corresponding to the Instrument of Instructions the Governor should be required to see that a suitable scheme of devlopment is drawn up and implemented as far as possible (See Para. *17).

20. **TRIBAL MINISTER—**

Connected with the formulation of development schemes and the provision of adequate expenditure for the hill tracts is the need for the appointment of a separate Minister to give effect to the plans and to look after the interests of the aboriginals. The tribal population in the C.P., Orissa and Bihar forms a considerable proportion of the total population and on this ground alone the tribals have a case for representation in the Provincial Government. In the C.P., the tribal population is nearly 18 per cent. In Orissa, almost a fifth of the population is tribal, and in Bihar there are over 5 millions of them constituting about 14 per cent. Partly in order to provide representation for the tribals and in any case to see that adequate attention is paid to their administration we are of the view that there should be a separate Minister for the tribal areas and tribes in C.P., Orissa and Bihar and that this should be provided by statute. The Minister should be a tribal himself unless a suitable person cannot be found. We may add that the Government of Orissa have recognised that there should be a separate portfolio for the welfare of the backward classes under the new constitution.

21. **SERVICES—**

It has been pointed out that the tribals constitute an appreciable proportion of the population particularly in some Provinces. On this account, the policy of recruitment of a due proportion of aboriginals having regard to reasonable efficiency, into the Government services is justified and necessary and must be followed. Apart from this, however, it is necessary that there should be an adequate number of tribals in the services so that the constant complaints of mishandling by non-tribal Officials, particularly, of such servants as forest guards, constables or excise peons and clerks can be minimized. Moreover, it is only by adequate representation in the Government and local bodies' services that the tribal can gain the necessary confidence and status.

We do not consider that a separate service of tribal people is necessary or desirable for the Scheduled Areas, and we recommend that they should be recruited to a general cadre. This will enable them to come into contact with non-tribes people and we also consider that there is

* Reference to para. is to para. in the original report.

no objection to the posting of selected non-tribal officials to the Scheduled Areas. In fact, in the evidence before us, opinion has been practically uniform that there is no necessity for a special cadre of officials for the hill tracts and what is really required is selection of sympathetic officials for working in the hills. We would draw attention here to the importance of providing suitable accommodation and facilities for medical attention to officials serving in the scheduled areas. Malaria and other diseases constitute the scourge of these hill tracts and unless special attention is paid to the health of the staff it is unlikely that development schemes will make much headway. The provision of facilities for recreation and adequate compensatory allowances for officials posted to these areas should be kept in mind. Any tendency to treat these posts as penal posts or posts for the safe deposit of incompetents must be strongly deprecated.

22. **TRIBAL PANCHAYATS**—

We have recommended that simplified rules should be continued where they are in force in the Scheduled Areas for the trial of civil and criminal cases. Wherever trial institutions are still fairly vigorous, we would recommend that they should be utilised to try petty civil disputes and criminal cases. The establishment of the more advanced type of village panchayat is recommended wherever possible.

23. **SHIFTING CULTIVATION**—

Shifting cultivation or podu is practised mostly in the Koraput and Ganjam agency tracts of Orissa and in the similar agency tracts of Madras. In the Central Provinces it is prohibited by law and is not practised to any appreciable extent except in the Baiga Chak where it is permitted and in the Zamindaris. We have nothing to add to the recommendations of the Orissa Partially Excluded Areas Inquiry Committee. This method of cultivation should be eliminated, as soon as possible.

24. **PROHIBITION**—

We invite the attention of Provincial Governments to the recommendations made by Mr. Symington (Bombay) and the Orissa Partially Excluded Areas Committee. Temperance propaganda should be taken up as part of the welfare work. A feeling has been growing among aboriginals, particularly in the tracts of Bombay and the Central Provinces that prohibition is to their advantage, and this feeling should be fostered among all the tribals.

25. **LAND**—

The importance of protection for the land of the tribals has been emphasised earlier. All tenancy legislation which has been passed hitherto with a view to protecting the aboriginal has tended to prohibit the alienation of the tribals land to non-tribals. Alienation of any kind, even to other tribals, may have to be prohibited or severely restricted in different stages of advancement are concerned. We find however that Provincial Governments are generally alive to this question and that protective laws exist. We assume that these will continue to apply and as we have made special provision to see that land laws are not altered to the disadvantage of the tribal in future, we do not consider additional restrictions necessary. As regards the allotment of new land for cultivation or residence however, we are of the view that the interests

of the tribal need to be safeguarded in view of the increasing pressure on land everywhere. We have provided accordingly that the allotment of vacant land, belonging to the State in Scheduled Areas should not be made except in accordance with special regulations made by the Government on the advice of the Tribes Advisory Council.

26. **MONEY-LENDERS—**

Connected with the protection of the land is the need for prevention of exploitation by money-lenders. We consider it necessary that in the Scheduled Areas money-lenders should not be permitted at all and that at any rate they should be allowed to operate under licence and stringent control only.

27. **THE SCHEDULED AREAS—**

It has been pointed out that areas like Sambalpur, Angul and Darjeeling need no longer be treated as partially excluded areas. The U. P. Government are of the view that the Khat Haripur Bias should be detached from the Hill Sub-division. They have also recommended the removal of the Dudhi Partially Excluded Areas. The population of the partially excluded areas in the United Provinces is *small and the Jaunsar Bawar pargana is not inhabited by people who* are in an ethnic sense tribals. We have not recommended a Tribes Advisory Council for U. P. and we do not consider it necessary to schedule either of these areas. Similarly we do not consider it necessary to schedule the Spiti area of the Punjab. In all these tracts, it will be open to the Provincial Government to apply the provisions of Part II of the law proposed by us. In Bombay, we consider that certain areas in the West Khandesh District and the partially excluded areas of the Broach and Panch Mahals District should henceforth be administered without any special provisions. The C. P. areas are retained as they are and in Chhota Nagpur we are provisionally of the view that only the three districts which have a majority of tribals should be scheduled. The schedule proposed is shown as Appendix D*.

On the other hand, there may be other areas which the Provincial Governments may like to bring under special administration. This can be done by the Provincial Government in their discretion. For the protection of the land of tribes line the Lepcha in Darjeeling the Provincial Government could make the appropriate provision of the chapter relating to the Scheduled Areas applicable to the area concerned.

28. **DRAFT PROVISIONS—**

We enclose a draft of provisions contemplated by us in roughly legal form (Appendix C*).

A. V. THAKKAR
Chairman.
D. N. SAMANTA.
THAKUR PHUL BHANU SHAH.
RAJ KRUSHNA BOSE.
JAIPAL SINGH.
P. C. GHOSH.

*Reference to appendices are to appendices in the original reports.

[Annexure IV]

APPENDIX D

Part I—Excluded Areas

MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

BENGAL

The Chittagong Hill Tracts.

THE PUNJAB.

Spiti and Lahoul in the Kangra District.

Part II—Partially Excluded areas

MADRAS

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

BOMBAY

In the West Khandesh District, the Shahada, Nandurbar and Taloda Taluks, the Navapur Petha and the Akrani Mahal, and the villages belonging to the following Mehwassi Chiefs' namely, (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walwi of Gaohali, (5) the Wassawa of Chikhli, and (6) the Parvi of Navalpur.

The Satpura Hills reserved forest areas of the East Khandesh District.

The Kalvan Taluk and Peint Peth of the Nasik District.

The Dhahanu and Shahapur Taluks and the Mokhada and Umbergaon Pethas of the Thana District.

The Dohad Taluk and the Jhalod Mahal of the Broach and Panch Mahalas District.

BENGAL

The Darjeeling District.

The Dewanganj, Sribardi, Nalitabori, Haluaghat, Durgapur and Kalmakanda police stations of the Mymensingh District.

THE UNITED PROVINCES

The Jaunsar-Bawar Pargana of the Dehra Dun District.

The portion of the Mirzapur District south of the Kaimur Range.

BIHAR

The Chhota Nagpur Division.

The Santal Parganas District.

THE CENTRAL PROVINCES AND BERAR

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil, and the Dhanora, Dudmala, Gewardha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partabgarh (Pagara), Almod and Sonpur jagirs of the Chhindwara District, and the portion of the Pachmarhi jagir in the Chhindwara District.

The Mandla District.

The Pendra, Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Chauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

ORISSA

The District of Angul.

The District of Sambalpur.

The areas transferred from the Central Provinces under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

The Ganjam Agency Tracts.

The areas transferred to Orissa under the provisions of the aforesaid Order from the Vizagapatam Agency in the Presidency of Madras.

APPENDIX D

[Annexure V]

I

Statement showing the total population and Tribal population of Provinces

Name of Province	Total Population	Tribal Population	Percentage
Madras	49,341,810	562,029	1·1
Bombay	20,849,840	1,614,298	7·7
Bengal	60,306,525	1,889,389	3·1
United Provinces	55,020,617	289,422	·53
Punjab	28,418,819	...	...
Bihar	36,340,151	5,055,647	13·9
C. P. and Berar	16,813,584	2,937,364	17·5
Assam	10,204,733	2,484,996	24·4
N.-W. F. P.	3,038,067	...	...
Orissa	8,728,544	1,721,006	19·7
Sind	4,535,008	36,819	·81
Ajmer-Merwara	583,693	91,472	15·6
Andaman and Nicobars	33,768	11,076	32·8
Baluchistan	501,631	3	...
Coorg	168,726	19,723	11·7
Delhi	917,939	...	...

Source : 1941 Census Table

II

Excluded and Partially Excluded Areas Population
(Provincial Totals)

Name of Province.	Areas in Sq. Miles.	Total Population.	Aboriginal or Backward Class.	Percentage.
Madras	Excluded Areas—			
	9·62 Sq. Miles + 201¾ acres.	18,357	18,335	99·9
	Partially Excluded Areas—			
	6,792·31	493,026	333,372*	67·6
Bombay	Excluded Areas—			
	Nil.			
	Partially Excluded Areas—			
	6,697†	1,125,471	663,528	58·9
Bengal	Excluded Areas—			
	5,007	247,053	233,392	94·5
	Partially Excluded Areas—			
	2,518	977,665	190,112	19·4
United Provinces	Excluded Areas—			
	Nil.			
	Partially Excluded Areas—			
	2,250	202,000	143,600	71·1
Punjab	Excluded Areas—			
	4,695	11,700	11,700 (Tibetans)	100
	Partially Excluded Areas—			
	Nil.			

*Includes 72,809 Backward Class.
†Does not include the area of "Satpura Hills Reserved Forest".

Name of Province	Areas in Sq. miles.	Total Population	Aboriginal or Backward Class	Percentage
Bihar	Excluded Areas— *Nil.* Partially Excluded Areas— 32,592	9,750,846	4,451,109	45·6
Central Provinces and Berar.	Excluded Areas— *Nil.* Partially Excluded Areas— 19,856	1,467,681	829,918	36·6
Orissa	Excluded Areas— *Nil.* Partially Excluded Areas— 19,831	2,939,416	1,560,104	53·07
GRAND TOTAL	100,248	17,233,205	8,435,190	48·95

III

Statement Showing Total Population and Tribal Population By Districts

Province or District.	Total Population.	Tribal Population.	Percentage.
MADRAS PROVINCE			
British Territory	49,341,810	562,029	1·14
Vizagapatam	3,845,944	286,923	7·46
Agency	421,437	140,721	63·55
Plains	3,624,507	146,202	4·03
Godavari East	2,161,863	101,532	4·70
Agency	271 569	97,200	35·79
Plains	1,890,294	4,332	·23
Godavari West	1,380,088	1,999	·14
Kistna	1,444,294	345	·02
Guntur	2,277,283	2,246	·10
Nellore	1,617,026	15	...
Cuddapah	1,056,507	19	...
Kurnool	1,146,250	5,878	·51
Bellary	1,051,235	·548	...
Anantapur	1,171,419	4	...
Madras	777,481	2	...
Chingleput	1,823,955	39	...
Chittoor	1 632,395	...	...
North Arcot	2,577 540	...	...
Salem	2,869,226	6	...
Coimbatore	2,809,648	12,440	·44
South Arcot	2,608,753	...	...
Tanjore	2,563,375	213	...
Trichinopoly	2,194,091	24	...
Madura	2,446,601	6	...
Ramnad	1,979,643	...	...
Tinnevelley	2,244,543	161	...
Nilgiris	209,709	62,951	30·02
Malabar	3,929,425	34,366	·87
South Kanara	1,523,516	52,312	3·43
BOMBAY PROVINCE			
Province of Bombay Proper	20,849,840	1,614,298	7·74
Bombay City	1,489 883	4 606	·31
Northern Division	5,276,593	874,103	16·56
Ahmedabad	1,372,171	8,730	·64
Ahmedabad City	591 267	5,744	·97
Broach & Panch Mahals	924 527	268,617	29·06
Kaira	914,957	5 161	·57
Surat	881,058	320,575	36·37
Thana	932,733	257,130	27·57
Bombay Suburban	251,147	13,890	5·53
Central Division	8,197,39	667,828	8·15
Ahmednagar	1,112,229	41,146	3·60
East Khandesh	1,327,722	61,054	4·60
West Khandesh	912,214	357,719	39·21
Nasik	1,113,901	167,280	15·02
Poona	1,359,408	36,835	2·71
Satara	1,327,249	11,014	·08
Shalapur	1,014,670	2,780	·21
Southern Division	5,885 971	67,761	1·15
Belgaum	1,225,428	1,674	·14
Bijapur	975,982	1,008	·10
Dharwar	1,210,016	1,414	·12
Kanara	441,157	197	·04
Kolaba	668,922	62,170	9·29
Ratnagiri	1,373,466	1,298	·09

Province or District.	Total Population.	Tribal Population.	Percentage.
BENGAL PROVINCE			
British Territory	60,306,525	1,889,389	3·13
Burdwan Division	10,237,369	706,729	6·87
Burdwan	1,890,732	151,355	8·0
Birbhum	1,048,317	74,084	7·07
Bankura	1,289,640	154,246	11·96
Midnapur	3,190,647	253,625	7·95
Hooghly	1,377,729	69,500	5·04
Howrah	1,490,304	3,919	·26
Presidency Division	12,817,087	99,235	·77
24-Parganas	3,536,386	51,085	1·44
Calcutta	2,108,891	1,688	·08
Nadia	1,759,846	12,671	·72
Murshidabad	1,640,530	26,138	1·59
Jessore	1,828,216	4,978	·27
Khulna	1,943,218	2,675	·14
Rajshahi Division	12,040,465	776,729	6·44
Rajshahi	1,571,750	67,298	4·28
Dinajpur	1,926,833	182,892	9·49
Jalpaiguri	1,089,513	279,296	25·63
Darjeeling	376,369	141,301	37·54
Rangpur	2,877,847	18,200	·63
Bogra	1,260,463	14,387	1·14
Pabna	1,705,072	6,906	·45
Malda	1,232,618	66,449	5·39
Dacca Division	16,683,714	65,398	·39
Dacca	4,222,143	4,029	·10
Mymensingh	6,023,758	59,722	·99
Faridpur	2,888,803	1,363	·05
Bakarganj	3,549,010	284	·01
Chittagong Division	8,477,890	241,298	2·85
Tippera	3,860,139	1,524	·04
Noakhali	2,217,402	34	..
Chittagong	2,153,296	6,348	·29
Chittagong Hill Tracts	247,053	233,392	94·47
UNITED PROVINCES			
British Territory	55,020,617	289,422	·53
Agra Province	40,906,147	289,244	·71
Meerut Division	5,716,451	70	..
Dehra Dun	266,244	..	..
Saharanpur	1,179,643	..	..
Muzaffarnagar	1,056,759	..	..
Meerut	1,896,582	..	..
Bulandshahar	1,317,223	70	..
Agra Division	5,326,768	79	..
Aligarh	1,372,641	1	..
Muttra	806,992	..	..
Agra	1,289,774	..	..
Etah	984,760	78	·01
Rohilkhand Division	6,195,996	57	..
Bareilly	1,176,197	28	..
Bijnor	910,223	11	..
Budaun	1,162,322	..	..
Moradabad	1,473,151	17	..
Shahjahanpur	983,385	1	..
Pilibhit	490,718	..	..

Province or District.	Total Population.	Tribal Population.	Percentage.
Allahabad Division	6,014,813	19,139	·32
Farrukhabad	955,377	47	...
Etawah	883,264	143	·02
Cawnpore	1,556,247	1,083	·70
Fatehpur	806,944	241	·03
Allahabad	1,812,981	17,625	·97
Jhansi Division	2,553,492	26,439	1·04
Jhansi	773,002	12,494	1·06
Jalaun	482,384	6,361	1·31
Hamirpur	575,538	7,584	1·32
Banda	722,568	...	...
Benares Division	5,545,257	141,661	2·55
Benares	1,218,629	21,152	1·74
Mirzapur	899,929	43,383	4·82
Jaunpur	1,387,439	3,353	·24
Ghazipur	985,380	21,641	2·20
Ballia	1,053,880	52,132	4·95
Gorakhpur Division	7,972,108	101,746	1·28
Gorakhpur	3,963,574	99,076	2·50
Basti	2,185,641	83	...
Azamgarh	1,822,893	2,587	·14
Kumaon Division	1,581,262	53	...
Nainital	291,861	...	...
Almora	687,286	...	...
Garhwal	602,115	53	·01
Oudh Province	14,114,470	178	...
Lucknow Division	6,530,932	7	...
Lucknow	949,728	7	...
Unao	959,542	...	...
Rae Bareli	1,064,804	...	...
Sitapur	1,293,554	...	...
Hardoi	1,239,279	...	...
Kheri	1,024,025	...	...
Fyzabad Division	7,583,538	171	...
Fyzabad	1,319,425	157	·01
Gonda	1,719,644	...	...
Bahraich	1,240,569	...	...
Sultanpur	1,100,368	14	...
Partabgarh	1,041,024	...	...
Bara Banki	1,162,508	...	...
BIHAR PROVINCE.			
British Territory	36,340,151	5,055,647	13·91
Patna Division	7,265,950	300,004	4·12
Patna	2,162,008	12,722	·59
Gaya	2,775,361	258,032	9·33
Shahabad	2,328,581	29,250	1·26
Tirhut Division	11,959,827	31,378	·35
Saran	2,860,537	18,314	·64
Champaran	2,397,569	20,086	·83
Muzaffarpur	3,244,651	1,996	·05
Darbhanga	3,457,070	982	·03
Bhagalpur Division	9,598,025	1,393,041	14·45
Monghyr	2,564,544	53,421	2·08
Bhagalpur	2,408,879	104,879	4·35
Purnea	2,390,105	104,856	4·38
Santal Parganas	2,234,497	1,129,885	50·56

Province or District.	Total Population.	Tribal Population.	Percentage.
Jhhota Nagpur Division	7,516,349	3,321,224	44·19
Hazaribagh	1,751,339	478,253	27·31
Ranchi	1,675,413	1,173,142	70·02
Palamau	912,734	323,106	35·40
Manbhum	2,032,146	678,126	33·37
Singhbhum	1,144,717	668,597	58·41
CENTRAL PROVINCES AND BERAR			
British Territory	16,113,584	2,937,364	17·47
Central Provinces	13,208,718	2,663,959	20·16
Jubbullpore Division	3,691,112	789,355	21·39
Saugor	939,068	82,107	8·74
Jubbalpore	910,603	166,958	18·33
Mandla	504,580	304,099	60·27
Hoshangabad	823,585	123,621	15·01
Nimar	513,276	112,570	21·93
Nagpur Division	3,924,985	854,939	21·78
Betul	438,342	168,229	38·38
Chhindwara	1,034,040	395,781	38·28
Wardha	519,330	51,848	9·98
Nagpur	1,059,989	66,471	6·27
Chanda	873,284	172,610	19·77
Chattisgarh Division	5,592,621	1,019,665	18·23
Bhandara	963,225	115,173	11·96
Balaghat	634,350	138,693	21·86
Raipur	1,516,686	273,260	17·01
Bilaspur	1,549,509	287,680	18·56
Drug	928,851	104,859	20·91
Berar Province	3,604,866	273,405	7·86
Amraoti	988,524	63,210	6·39
Akola	907,742	30,456	3·36
Buldana	820,862	19,849	2·42
Yeotmal	887,738	159,890	18·01
ASSAM PROVINCE			
British Territory	10,204,733	2,484,996	24·35
Surma Valley and Hill Division	4,218,875	683,546	16·20
Cachar	641,181	178,264	27·80
Sylhet	3,116,602	69,907	2·24
Khasi & Jaintia Hills (British)	118,665	103,567	87·28
Naga Hills	189,641	184,766	97·43
Lushai Hills	152,786	147,042	96·24
Assam Valley Division	5,919,228	1,757,664	29·74
Goalpara	1,014,285	237,993	23·46
Kamrup	1,264,200	197,926	15·66
Darrang	736,791	260,748	35·39
Nowgong	710,800	166,525	23·43
Sibsagar	1,074,741	360,768	33·57
Lakhimpur	894,842	335,230	37·46
Garo Hills	223,569	198,474	88·78
			66·49

Province or District.	Total Population.	Tribal Population.	Percentage.
Assam Valley Division —contd.			
Sadiya Frontier Tracts	60,118	39,974	58·54
Balipara Frontier Tracts	6,512	3,812	
ORISSA PROVINCE			
British Territory	8,728,544	1,721,006	19·72
Cuttack	2,431,427	55,280	2·27
Balasore	1,029,430	29,757	2·69
Puri	1,101,939	29,555	2·68
Sambalpur	1,182,622	232,095	19·71
Ganjam	1,855,264	433,687	23·38
Plains	1,392,188	59,658	4·29
Agency	463,076	374,029	80·77
Koraput	1,127,862	940,632	83·40
SIND PROVINCE			
British Territory	4,535,008	36,819	·81
Dadu	389,380	154	·31
Hyderabad	758,748	769	·10
Karachi	713,900	884	·12
Larkana	511,208	...	...
Nawabshah	584,178	1,326	·23
Sukkur	692,556	51	·01
Thar Parkar	581,004	33,635	5·79
Upper Sind Frontier	304,034	...	...
AJMER-MERWARA	583,693	91,472	15·67
ANDAMANS & NICOBARS			
Andamans	33,768	11,076	32·80
Nicobars	21,316	...	...
Coorg	12,452	11,076	88·95
	168,726	19,723	11·69

IV

Schedule 13 to Government of India (Provincial Legislative Assemblies) Order, 1936

BACKWARD TRIBES

PART I—MADRAS

1. Bagata.
2. Bottadas—Bodo Bhottada, Muria Bhottada and Sano Bhottada.
3. Bhumias—Bhuri Bhumia and Bodo Bhumia.
4. Bissoy—Barangi Jodia, Bennangi Daduva, Frangi, Hollar, Jhoria, Kollai, Konde, Paranga, Penga-Jodia, Sodo Jodia and Takora.
5. Dhakkada.
6. Domb—Andhiya Dombs, Audiniya Dombs, Chonel Dombs, Christian Dombs, Mirgani Dombs, Oriya Dombs, Ponaka Dombs, Telaga and Ummia.
7. Gadabas—Boda Gadaba, Cerlam Gadaba, Franji Gadaba, Jodia Gadaba, Olaro Gadaba, Pangi Gadaba and Paranga Gadaba.
8. Ghasis—Boda Ghasis and San Ghasis.
9. Gondi—Modya Gond and Rajo Gond.
10. Goundus—Bato, Bhirithya, Dudhokouria, Hato, Jatako and Joria.
11. Kosalya Goudus—Bosothoriya Goudus, Chitti Goudus, Dangayath Goudus, Doddu Kamariya, Dudu Kamaro, Ladiya Goudus and Pullosoriay Goudus.
12. Magatha Goudus—Bernia Goudu, Boodo Magatha, Dongayath Goudu, Ladya Goudu, Ponna Magatha and Sana Magatha.
13. Serithi Goudus.
14. Holva.
15. Jadapus.
16. Jatapus.
17. Kammaras.
18. Khattis—Khatti, Kommaro and Lohara.
19. Kodu.
20. Kommar.
21. Konda Dhoras.
22. Konda Kapus.
23. Kondareddis.
24. Kondhs—Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs and Yenity Kondhs.
25. Kotia—Bartikar, Bentho Oriya, Dhulia or Dulia, Holva Paiko, Putiay, Sanrona and Sidho Paiko.
26 Koya or Gound with its sub-castes, Raja or Rasha Koyas, Lingadhari Koyas, Koyas (ordinary) and Kottu Koyas.

27. Madigas.
28. *Malas* or *Agency Malas or Valmikies.*
29. Malis—Worchia Malis, Paiko Malis and Pedda Malis.
30. Maune.
31. Manna Dhora.
32. Mukha, Dhora-Nooka Dhora.
33. Muli or Muliya.
34. Muria.
35. Ojulus or Metta Komsalies.
36. Omanaito.
37. Paigarapu.
38. Palasi.
39. Palli.
40. Pentias.
41. Porjas—Bodo, Bonda, Daruva, Didua, Jodia, Mundili, Pengu Pydi and Saliya.
42. Reddi or Dhoras.
43. Relli or Sachandi.
44. Ronas.
45. Savaras—Kapu Savaras, Khutto Savaras and Maliya Savaras.

PART II—BOMBAY

1. Barda.
2. Bavacha.
3. Bhil
4. Chodhra.
5. Dhanka.
6. Dhodia.
7. Dubla.
8. Gamit or Gamta.
9. Gond.
10. Kathodi, or Katkari.
11. Konkana.
12. Koli Mahadeb.
13. Mavchi.
14. Naikda or Nayak.
15. Pardhi, including Advichincher of Phanse Pardhi.
16. Patelia.
17. Pomla.
18. Powara
19. Rathawa.
20. Tadvi Bhill.
21. Thakur.
22. Valvai.
23. Varli.
24. Vasava.

PART III—BIHAR

A person shall be deemed to be a member of a backward tribe if and only if—

(*a*) he is resident in the Province and belongs to any of the following tribes:—

1. Asur.
2. Banjara.
3. Bathudi.
4. Bentkar.
5. Binghia.
6. Birhor.
7. Birjia.
8. Chero.
9. Chik Baraik.
10. Gadaba.
11. Ghatwar.
12. Gond.
13. Gorait.
14. Ho.
15. Jaung.
16. Karmali.
17. Kharia.
18. Kharwar.
19. Khetauri.
20. Khond.
21. Kisan.
22. Koli.
23. Kora.
24. Korwa.
25. Mahli.
26. Mal Paharia.
27. Munda.
28. Oraon.
29. Parhiya.
30. Santal.
31. Sauria Paharia.
32. Savar.
33. Tharu.

(*b*) he is resident in any of the following districts or police stations, that is to say the districts of Ranchi, Singhbhum, Hazaribagh and the Santal Parganas and the police stations of Arsha, Balarampur, Jhalda, Jaipur, Baghmundi, Chandil, Ichagarh, Barahabhum, Patamada, Banduan and Manbazar in the district of Manbhum and belongs to one of the following tribes :—

1. Bauri.
2. Bhogta.
3. Bhuiya.
4. Bhumij.
5. Ghasi.
6. Pan.
7. Rajwar.
8. Turi.

(*c*) he is resident in the Dhanbad sub-civision or any of the following police stations in the Manbhum district, that is to say, Purulia, Hura, Pancha, Ragunathpur, Santuri, Nituria, Para, Chas, Chandan-Kiari and Kashipur, and belongs to the Bhumi tribe.

PART IV—CENTRAL PROVINCES

1. Gond.
2. Kawar.
3. Maria.
4. Muria.
5. Halba.
6. Pardhan.
7. Oraon.
8. Binjhwar.
9. Andh.
10. Bharia Bhumia.
11. Koti.
12. Bhattra.
13. Baiga.
14. Kolam.
15. Bhil.
16. Bhuinhar.
17. Dhanwar.
18. Bhaina.
19. Parja.
20. Kamar.
21. Bhunjia.
22. Nagarchi.
23. Ojha.
24. Korku.
25. Kol.
26. Nagasia.
27. Sawara.
28. Korwa.
29. Majhwar.
30. Kharia.
31. Saunta.
32. Kondh.
33. Nihal.
34. Birhaul (or Biror).
35. Rautia.
36. Pando.

PART V—ORISSA

A person shall be deemed to be a member of backward tribe if and only if—

(*a*) he is resident in the Province and belongs to any of the following tribes :—

1. Bagata.
2. Banjari.
3. Chenchu.
4. Gadaba.
5. Gond.
6. Jatapu.
7. Khond (Kond)
8. Konda-Dora.
9. Koya.
10. Paroja.
11. Saora (Savar).
12. Oraon.
13. Santal.
14. Kharia.
15. Munda.
16. Banjara.
17. Bingjia.
18. Kisan.
19. Koli.
20. Kora.

(*b*) he is resident in any of the following areas, that is to say, the Koraput and Khondmals districts and the Ganjam Agency and belongs to either of the following tribes :—

1. Dom or Dombo.
2. Pan or Pano.

(*c*) he is resident in the Sambalpur district and belongs to any of the following tribes :—

1. Bauri.
2. Bhuiya.
3. Bhumij.
4. Ghasi.
5. Turi.
6. Pan or Pano.

[Annexure VI]

APPENDIX D

Statutory Recommendations

PART I

A. The Provincial Government may at any time by notification apply the provisions of Part II of this Chapter or of any of its sections to such areas as may be specified in the notification, being areas inhabited by any of the tribes named in Schedule A (and hereinafter referred to as "the tribes").

B. (1) The number of representatives of the tribes in the Provincial Legislature shall not be less in proportion to the total number of representatives than the population of the tribes in the province bears to its total population.

(2) In the Federal Legislature (House of the People) there shall be such number of representatives of the tribes of each Province as may be in accordance with the total population of the tribes in that Province on the scale prescribed in Section.

C. The election of the representatives of the tribes to the Provincial Legislature shall be by universal adult franchise.

PART II

D. As from the commencement of this Constitution the provisions of this Part shall apply to the areas specified in Schedule B to this Chapter (and hereinafter referred to as "the Scheduled Areas").

E. (1) The Provincial Government may, if so advised by the Tribes Advisory Council, by notification direct that any law passed by the Legislature shall not apply to a Scheduled Area or shall apply with such modifications as it may prescribe :

Provided that the Provincial Government shall, if so advised by the Tribes Advisory Council, direct that any law passed by the Provincial Legislature in respect of the following subjects, that is to say, (i) all social matters including inheritance of property ; (ii) occupation of land (not being forest reserved under the provisions of the Indian Forest Act or other law applicable) including tenancy laws, allotment of land, reservation of land for any purpose ; (iii) village management, including the establishment of village panchayats, shall not apply to a Scheduled Area or shall apply with such modifications as it may prescribe with the concurrence of the said Council.

(2) The Provincial Government may, in consultation with the Tribes Advisory Council, make special regulations for a Scheduled Area on any matter not provided for by a law in force in the Area.

F. Vacant land in a Scheduled Area which is the property of the State shall not be allotted to a non-tribal except in accordance with rules made by the Provincial Government in consultation with the Tribes Advisory Council.

G. (1) The Provincial Government may, and if so advised by the Tribes Advisory Council shall, direct that no person shall carry on business in a Scheduled Area as a moneylender except under and in accordance with the conditions of a licence issued by it or by an officer authorised by it in this behalf.

(2) Any contravention of an order issued by the Provincial Government under sub-section (1) of this Section shall be an offence.

H. The revenue and expenditure pertaining to a Scheduled Area which is credited to or met from the funds of the Provincial Government shall be shown separately in the annual financial statement of the Provincial Government.

I. There shall be paid out of the revenues of the Federation such capital and recurring sums as may be necessary to enable the Provincial Government to meet the cost of such schemes of development as may be undertaken with the approval of the Federal Government for the purpose of raising the level of administration of the Scheduled Areas and all round development of the tribes to that of the rest of the province.

J. (1) There shall be established as soon as may be after the commencement of this Constitution in the Provinces of Madras, Bombay, West Bengal, Bihar, C. P. and Berar and Orissa, a Tribes Advisory Council to perform such functions as may be prescribed in this Constitution and to advise the Provincial Government from time to time on all matters pertaining to the administration and welfare of the tribes and of the Scheduled Areas.

(2) The Tribes Advisory Council shall consist of not less than ten and not more than twenty-five members of whom three-fourths shall be elected representatives of the tribes in the Provincial Legislature (Lower House).

(3) The Provincial Government may make rules prescribing or regulating as the case may be :—

(a) the number of members of the Council, the mode of appointment of the members and of the Chairman or other office-bearers ;

(b) the conduct of meetings and procedure in general ;

(c) relations with officials and local bodies ;

(d) all other incidental matters.

K. (1) The Federal Government may, at any time, and shall after the expiry of ten years from the commencement of this Constitution, institute a Commission to report on the administration of the tribes and the Scheduled Areas in general.

(2) The Federal Government may at any time require the Provincial Government to draw up and execute such schemes as it considers essential for the welfare of the tribes.

L. In the Provinces of Bihar, the Central Provinces and Berar and Orissa there shall be a separate Minister for Tribal Welfare :

Provided that the Minister may hold charge simultaneously of welfare work pertaining to Scheduled Castes or other backward classes or any other work.

M. Notwithstanding anything in the Criminal Procedure Code 1898, or the Civil Procedure Code (Act V of 1908), the Provincial Government may make special regulations for a Scheduled Area for the trial of offences other than those punishable with imprisonment for five years or more or with death or transportation for life and of disputes other than those arising out of special laws respectively and may empower headmen or panchayats to try such cases.

[Annexure IX]

APPENDIX D

Schedule A

PART I—MADRAS

1. Bagata.
2. Bottadas—Bodo Bhottada, Muria Bhottada and Sano Bhottada.
3. Bhumias—Bhuri Bhumia and Bodo Bhumia.
4. Bissoy—Bharangi Jodia, Bennangi Daduva, Frangi, Hollar, Jhoria, Kollai, Konde, Paranga, Penga Jodia, Sodo Jodia and Takora.
5. Dhakkada.
6. Domb—Andhiya Dombs, Audiniya Dombs, Chonel Dombs, Christian Dombs, Mirgani Dombs, Oriya Dombs, Ponaka Dombs, Telag and Ummia.
7. Gadabas—Boda Gadaba, Cerlam Gadaba, Fanji Gadaba, Jodia Gadaba, Olaro Gadaba, Pangi Gadaba and Paranga Gadaba.
8. Ghasis—Boda Ghasis and San Ghasis.
9. Gondi—Modya Gond and Rajo Gond.
10. Goundus—Bato, Bhirithya, Dudhokouria, Hato, Jatako and Joria.
11. Kosalya Goudus—Bosothoriya Goudus, Chitti Goudus, Dangayath Goudus, Doddu Kamariya, Dudu Kamaro, Ladiya Goudus and Pullosoriay Goudus.
12. Magatha Goudus—Bernia Goudu, Boodo Magatha, Dongayath Goudu Ladya Goudu, Ponna Magatha and Sana Magatha.
13. Serithi Goudus.
14. Holva.
15. Jadapus.
16. Jataus.
17. Kammaras.
18. Khattis—Khatti, Kommaro and Lohara.
19. Kodu.
20. Kommar.
21. Konda Dhoras.
22. Konda Kapus.
23. Kondareddis.
24. Kondhs—Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs and Yenity Kondhs.
25. Kotia—Bartikar, Bentho Oriya, Dhulia or Dulia, Holva Paiko, Putiay, Sanrona and Sidho Paiko.
26. Koya or Gound with its sub-sects, Raja of Rasha Koyas, Lingadhari Koyas, Koyas (ordinary) and Kottu Koyas.
27. Madigas.
28. Malas or Agency Malas or Valmikies.
29. Malis—Worchia Malis, Paiko Malis and Pedda Malis.

30. Maune.
31. Manna Dhora.
32. Mukha Dhora—Nooka Dhora.
33. Muli or Muliya.
34. Muria.
35. Ojulus or Metta Komsalies.
36. Omanaito.
37. Paigarapu.
38. Palasi.
39. Pali.
40. Pentias.
41. Porjas—Bodo, Bonda, Daruva, Didua, Jodia, Mundili, Pengu Pydi and Saliya.
42. Reddi or Dhoras.
43. Relli or Sachandi.
44. *Ronas.*
45. Savaras—Kapu Savaras, Khutto Savaras and Maliya Savaras.
46. The inhabitants of the Laccadive, Minicoy and Amindivi Islands.

PART II—BOMBAY

1. Barda.
2. Bavacha.
3. Bhil.
4. Chodhra.
5. Dhanka.
6. Dhodia.
7. Dublia.
8. Gamit or Gamta.
9. Gond.
10. Kathodi or Katkari.
11. Konkna.
12. Koli Mahadeb.
13. Mavchi.
14. Naikda or Nayak.
15. Pardhi, including Advichincher or Phanse Pardhi.
16. Patelia.
17. Pomla.
18. Powara.
19. Rathawa.
20. Tadvi Bhill.
21. Thakur.
22. Valvai.
23. Varli.
24. Vasava.

PART III—BIHAR

4(*a*) A resident of the province belonging to any of the following tribes :—

1. Asur.
2. Bajra.
3. Bathudi.
4. Bentkar.
5. Binjhia.
6. Birhor.
7. Birjia.
8. Chero.
9. Chik Baraik.
10. Gadaba.
11. Ghatwar.
12. Gond.
13. Gorait.
14. Ho.
15. Juang.
16. Karmali.
17. Kharia.
18. Kharwar.
19. Khetauri.
20. Khond.
21. Kisan.
22. Koli.
23. Kora.
24. Korwa.
25. Mahli.
26. Mal Paharia.
27. Munda.
28. Oraon.
29. Parhiya.
30. Santal.
31. Souria Paharia.
32. Savar.
33. Tharu.

(*b*) a resident in any of the following districts or police stations, that is to say, the districts of Ranchi, Singhbhum, Hazaribagh and the Santal Parganas, and the police stations of Arsha, Balarampur, Jhalda, Jaipur, Baghmundi, Chandil, Ichagarh, Barahabhum, Patamda Banduan and Manbazar in the district of Manbhum, belonging to any of the following tribes :—

1. Bauri.
2. Bhagta.
3. Bhuiya.
4. Bhumij.
5. Ghasi.
6. Pan.
7. Rajwar.
8. Turi.

(*c*) a resident in the Dhanbad Sub-Division or any of the following police stations in the Manbhum District, that is to say, Purulia, Hura, Pancha, Raghunathpur, Santuri, Nituria, Para, Chas, Chandan-Kiari and Khasipur, belonging to the Bhumij tribe.

PART IV—CENTRAL PROVINCES

1. Gond.
2. Kawar.
3. Maria.
4. Muria.
5. Halba.
6. Pardhan.
7. Oraon.
8. Bimjhwar.
9. Andh.
10. Bharia-Bhumia.
11. Koti.
12. Bhattra.
13. Baiga.
14. Kolan.
15. Bhil.
16. Bhuinhar.
17. Dhanwar.
18. Bhaina.
19. Parja.
20. Kamar.
21. Bhunjia.
22. Nagarchi.
23. Ojha.
24. Korku.
25. Kol.
26. Nagasia.
27. Sawara.
28. Korwa.
29. Majhwar.
30. Kharia.
31. Saunta.
32. Kondh.
33. Nihal.
34. Birhaul (or Birhor.)
35. Rautia.
36. Pando.

PART V—ORISSA

(*a*) A resident of the province belonging to any of the following tribes :—

1. Bagata.
2. Banjari.
3. Chenchu.
4. Gadaba.
5. Gond.
6. Jatapu.
7. Khand (Kond).
8. Konda-Dora.
9. Koya.
10. Paroja.
11. Saora (Savar).
12. Oraon.
13. Santal.
14. Kharia.
15. Munda.
16. Banjara.
17. Binjhia.
18. Kisan.
19. Koli.
20. Kora

(*b*) a resident of any of the following areas, that is to say, the Koraput and Khondmals Districts and the Ganjam Agency belonging to either of the following tribes :—

1. Dom or Dombo.
2. Pan or Pano.

(*c*) a resident of the Sambalpur District belonging to any of the following tribes :—

1. Bauri.
2. Bhuiya.
3. Bhumij.
4. Ghasi.
5. Turi.
6. Pan or Pano.

PART VI—BENGAL

1. Botia.
2. Chakma.
3. Kuki.
4. Lepcha.
5. Munda.
6. Magh.
7. Mro.
8. Oraon.
9. Santal.
10. Tippera.
11. Any other tribe notified by the Provincial Govt.

PART VII—UNITED PROVINCES

1. Bhuinya.
2. Baiswar.
3. Baiga.
4. Gond.
5. Kharwar.
6. Kol.
7. Ojha.
8. Any other tribe notified by the Provincial Govt.

Schedule B

MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

BENGAL

The Chittagong Hill Tracts.

BOMBAY

In the West Khandesh District:—The Navapur Petha, the Akrani Mahal and the villages belonging to the following Mehwassi Chiefs: (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walwi of Gaohali, (5) the Wassawa of Chikhli and (6) the Parvi of Navalpur.

In the East Khandesh District:—The Satpura Hills Reserved Forest Areas.

In the Nasik District:—The Kalvan Taluk and Peint Peth.

In the Thana District:—The Dahanu and Shahpur Talukas and Mokhala and Umbergaon Pethas.

BIHAR

The Ranchi and Singhbhum districts and the Latehar Sub-division of the Palamau district of the Chota Nagpur Division.

The Santal Paraganas District, excluding the Godda and Deogarh sub-divisions.

THE CENTRAL PROVINCES AND BERAR

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil and the Dhanora, Dudmala, Gewardha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partabgarh (Pagara), Almod and Sonpur Jagirs of the Chhindwara District, and the portion of the Pachmarhi Jagir in the Chhindwara District.

The Mandla District.

The Pendra, Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Chauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

ORISSA

The Ganjam Agency Tracts including Khondmals.

The Koraput District.

MINUTE OF DISSENT

Scheduled Areas

I regret I must submit a minute of dissent in regard to the "Scheduled areas" for the Chhota Nagpur Plateau. I cannot agree to the elimination of the Districts of Manbhum, Hazaribagh and Palamau which, even according to the unreliable 1941 Census, contain 678,126, 478,253 and 323,106 Adibasis respectively, that is, a total of 1,479,485 Adibasis for the three Districts. I cannot see how I can agree to the demolition of the economic, geographical and ethnic unity and entity of the Chhota Nagpur Division. It is not right that we should give an *ex parte* verdict and change the *status quo* of these three Districts.

JAIPAL SINGH.

The 19th August 1947.

[Annexure VIII]

APPENDIX D

INTERIM REPORT OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE

Summary of Recommendations

1. Tribes who live in the non-excluded areas are part of the problem and the tribes as a whole should be treated as a minority. Tribals should have reserved seats in a joint electorate based on adult franchise in proportion to their population. One representative each is recommended for the Laccadive, Amindivi and Minicoy islands respectively in the Madras Legislature and one for the Lahaul and Spiti Waziris in the East Punjab Legislature [Para. *9 and Sections A and B (1) of Appendix C]

2. It will be necessary to provide for the exclusion of unsuitable legislation in such matters as land, village management and social customs in certain areas inhabited predominantly or to an appreciable extent by tribals. These areas will be known as Scheduled Areas (Para. *10).

3. Legislation in such matters as land and social customs should not be applied to Scheduled Areas if the Tribes Advisory Council advises to the contrary (Paras. *11 and 12 and Section E of Appendix C).

4. Simplified procedure should be continued for the disposal of petty criminal and civil cases (Para. *13 and Section M).

5. Seats should be reserved in the Federal Legislature on the basis of the tribal population of the province. A Tribal Advisory Council should be set up with a minimum of ten and a maximum of 25 members in Madras, Bombay, Bengal, Bihar, C. P. and Orissa (Para. *15 and Section J of Appendix C).

6. There should be provision for the Federal Government to institute a special commission to enquire into the progress of plans of development and also into the conditions of the Scheduled Areas and tribals in general [Para. *16 and Section K (1) of Appendix C].

7. It will be necessary for the Central Government to come to the assistance of Provincial Governments for the execution of schemes of development by providing the necessary funds. The Central Government should also be in a position to require the Provincial Governments to draw up schemes for the Scheduled Areas (Para. *17 and Sections I and K (2) of Appendix C).

8. The revenues derived from and the expenses incurred on the Schedule Areas from the provincial budget should be shown separately in the annual financial statement of the province (Para. *18 and Section H of Appendix C).

9. It should be the Governor's responsibility to see that schemes of development are drawn up and implemented. (Para. *19).

10. There should be a separate Minister for Tribal Welfare in C. P. Orissa and Bihar, and provision for this should be contained in the statute. (Para. *20 and Section L of Appendix C).

11. There should be a due proportion of aboriginals recruited into the various Government Services. A separate service is not recommended but non-tribal officials posted to the Scheduled Areas should be selected with care. (Para. *21).

12. Tribal panchayats should be encouraged wherever possible (Para. *22).

13. Shifting cultivation should be discouraged (Para. *23).

14. Temperance propaganda should be carried on as part of tribal welfare work (Para *24).

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*References to paras., sections and appendices are to paras., sections and appendices in the orginal reports.

15. The alienation of land belonging to tribals to non-tribals should be prohibited. Allotment of new land in Scheduled Areas should not be made to non-aboriginals except in exceptional cases (Para. *25 and Section F of Appendix C).

16. There should be provision for control of money-lenders by a system of licensing (Para. *26 and Section G of Appendix C).

Sambalpur, Angul and Darjeeling and certain areas in Bombay need not be treated as Scheduled Areas. In Bihar the three districts of Ranchi, Singhbhum, and Santal Parganas only where the tribes are in a majority are included in the Schedule provisionally. The U. P. and Punjab areas are not included (Para. *27 and Schedule B of Appendix C).

[Annexure VII]

APPENDIX D

FINAL REPORT

To

THE CHAIRMAN,

ADVISORY COMMITTEE ON MINORITIES, ETC.

DEAR SIR,

This is our final report written after our visit to Bihar and the United Provinces. It relates to the partially excluded areas of these provinces and the excluded areas of the Punjab in respect of all of which the recommendations contained in our interim report were provisional. Certain general recommendations have also been added.

2. With reference to Bihar we confirm the constitutional proposals already made by us *in toto*.

BIHAR

We consider it necessary in addition to refer to certain matters connected with the administration of this, the largest compact block of territory comprising any excluded area in India, which came to our notice during our tour. To begin with, the Christian section of the tribals, though small in number (see statement appended), is educationally and economically far in advance of the non-Christian tribals. The demand for education among the non-Christians is said to be negligible and this presumably is the result of their economic backwardness which makes it necessary that children should assist their parents in earning their livelihood. There are however allegations that the Christian teachers and educational officials encourage only Christian children, and as a good number of the schools are run by Christian Missions, the non-Christians lack facilities for education. The Christians again appear to be much better organised and vocal and they are found to take prominent part in local and political organisations. The other striking feature of this area is the feeling common among educated tribals and shared by non-tribals in considerable measure that Chhota Nagpur has little share in the administration commensurate with its area, population and industrial importance and is being neglected by the Government which is made up of elements interested mostly in the rest of Bihar. Certain non-aboriginal witnesses have expressed their views of the neglect of Chota Nagpur in no uncertain terms and suggested that the ameliorative measures claimed by the Government are purely defensive action prompted by the separation

* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

movement. Even when the Government is supposed to be resident at Ranchi, it is given as concrete proof of their lack of interest that they are mostly absent on tour in areas other than Chhota Nagpur in which they are interested. Dr. Sinha has also stated that the present Government has yet to do something "to capture the imagination of the people" and that under the present practice "the Honourable Ministers stay for a very short period at Ranchi—at their own will and convenience—and do not usually visit so much the aboriginal areas as they do those of the other three divisions of Bihar". We have referred to these statements not, because we are in agreement with them or with a view to adjudicating on them but purely as indicative of the local atmosphere. Dr Sinha has referred to the absence of the aboriginal element in the Ministry and has recommended reconstitution.

The extreme expression of the discontent prevalent in Chhota Nagpur is the separatist movement which demands the formation of a new province of Jharkhand out of the partially excluded area. This movement is sponsored at present by the Adibasi Mahasabha containing a very large advanced or Christian element but in Singhbhum and in the Santal Parganas also, a good proportion of non-Christians seem to have been affected by it. To borrow Dr. Sinha's words it is "capturing the imagination" of the tribals. Unmistakably also the movement is gaining sympathy among the non-aboriginals; and even if it be partly due to mere local ambition, the virtual exclusion of tribal elements from the Cabinet has undoubtedly contributed much to it. We have already held in our interim report that the question of the formation of a separate province is not for us to tackle but we would invite the attention of the Provincial and Central Governments to the separation movement, which seems to be gaining strength, as a symptom of the discontent which is simmering in varying intensity among all sections of the Chota Nagpur population. At the same time we have noticed that the Cabinet of the Bihar Government and such an eminent public man as Dr. S. Sinha oppose the separation movement on the grounds very well shown in the brochure of Dr. Sinha. We have also received a number of telegrams from these areas saying that they thoroughly disapprove of the separatist movement.

We are inclined to the view which seems to be shared by Dr. Sinha also, that there should be adequate association of the people of the partially excluded areas, particularly the tribals, in the different branches of the administration including the Cabinet and that there can be neither satisfaction nor adequate progress until this is done. In short, the problem of administration in this tract must be dealt with not only by economic and educational improvements but also by remedies which recognise its political and psychological aspects; and we would lay the maximum emphasis on the urgency of action in both these directions.

UNITED PROVINCES

3. As regards the partially excluded areas of the United Provinces viz., the Jaunsar-Bawar Pargana in the Dehra Dun District and the area comprising the Dudhi Tahsil and part of the Robertsganj Tahsil of the Mirzapur District, we find that both of these comparatively small areas are suffering from serious neglect. Although a committee was set up as early as 1939 to enquire into the administration of the Jaunsar-Bawar Pargana and a report was submitted by it in 1941, it is a matter for regret that no action has yet been possible although the report was ultimately made only by the official members of the Committee. We understand that another committee has been appointed recently this year to go into the matter by the Provincial Government and hope that speedy

action will be taken on its report. The main matters which require attention in this area are as follows:—

(1) the fixation and collection of land revenue and distribution of "rights timber" through the agency of the Sayanas as well as the position of the Sayana in the village panchayat which gives rise to a great deal of oppression.

(2) survey resettlement of the area and removal of restrictions on the possession of land and reclamation of waste land by Koltas (local depressed castes of Hindus).

(3) the elimination of social evils like polyandry and venereal disease.

In the partially excluded area of the Mirzapur District which is inhabited by a majority of tribals we find that the administration is of a pretty primitive character. The figures given in the U. P. Government's factual memorandum for the Dudhi Government Estate which are shown below indicate that the revenue from it is not utilised to the extent of even two-fifths of the administration of the area:—

	Income	Expenditure
1944-45	1,64,430	83,421
1945-46	2,96,002	88,002
1946-47	2,34,797	89,854
TOTAL	6,95,229	2,61,277 i.e. 37·6 per cent. of the income.

We would draw particular attention to the statement of witnesses that a very large percentage of the population of this area is suffering from venereal disease. In the Dudhi Estate the U. P. Government have themselves noted that there is a passage of land from the hands of the aboriginals to the non-aboriginals. It would appear that the rules of the Dudhi Estate are ineffective in preventing this since land can be surrendered to the Supurdar who re-allots the same to another person, most probably a non-aboriginal. Such a transfer unfortunately does not require the approval of the S.D.O. or the Collector. It does not appear that suitable steps have been taken to put a stop to this. Among other complaints are the working of the monopoly given to Messrs. Gladstone Wyllie and Co., Ltd., for the collection and sale of lac which is terminable in the year 1952. The working of this monopoly under which only about one-seventh, or if we allow for overhead and working charges, not more than one-fourth, of the price realised by the company for the sale of the lac is obtained by the aboriginal cultivator tends to keep the aboriginal in a miserable condition. It does not appear to us that the Government have any comprehensive or fully considered programme for this area as yet.

The population of this tract is very small ($\frac{1}{3}$ per cent.) in comparison with the total population of the United Provinces. We would not on that account recommend for its future administration the proposals which we have recommended for some of the backward tracts of other provinces, but

we are equally definite that special provisions for its development are essential, as without them it is certain that due attention will not be paid to its needs. Similarly although the inhabitants of the Jaunsar-Bawar Area, as pointed out in our interim report, are not tribals by race and we do not recommend inclusion in the schedule of our Interim Report special provisions are necessary for this area also. We recommend therefore constitutional provisions for both of these tracts as follows:—

(1) there should be an advisory committee consisting of tribes or backward people to the extent of not less than two-thirds of its membership to advise the Government on the development of the area.

(2) the estimated revenue and expenditure (including development schemes) pertaining to the area should be shown separately in the provincial budget;

(3) although general administration of the type in force in other districts may be applied to the tract, the trial of petty civil and criminal cases should be permissible under special regulations;

(4) there should be provision in the Constitution prohibiting the transfer of land from aboriginals to non-aboriginals except with the sanction of an authorised officer;

(5) the powers of Supurdars in the Dudhi area of Mirzapur District to allot waste lands and accept surrender of land should be withdrawn and in Jaunsar-Bawar the system of Sayanas should be abolished and the Sayanas replaced by Government employees;

(6) the U. P. Government should report to the Central Government annually or as may be required by the Central Government regarding the administration of this area and abide by its directive;

(7) there shall be one seat reserved in the Provincial Assembly for a tribal from the area of the Mirzapur District which is now partially excluded.

EAST PUNJAB

4. The disturbed conditions in the East Punjab have prevented the appearance of witnesses from Spiti and Lahoul before us and it is equally not possible for us to visit the area. It is unlikely that settled conditions will prevail in the Punjab before the passes are blocked and we do not propose therefore to postpone our recommendations which will now be based on the factual memorandum sent by the Provincial Government.

We consider that constitutional provisions should be made as follows:—

(a) An Advisory Committee of which at least 2/3 shall be local residents shall be set up to advise the Provincial Government regarding the administration of Lahoul and Spiti.

(b) The Provincial Government may declare any law passed by the Federal or Provincial Legislature as not applicable to the tracts or applicable with specified modifications.

(c) The Provincial Government may make special regulations for the administration of criminal and civil law and the protection or rights of local Tibetan inhabitants in land.

(d) The Provincial Government shall report to the Central Government annually or as may be required by the Central Government regarding the administration of this area and abide by its directive.

(e) We confirm the recommendation made in paragraph 9 of the Interim Report that there should be a representative for Lahoul and Spiti in the Provincial Legislature.

5. **A Central Department.**—After surveying the position in all the provinces, we have been forced to the conclusion that unless there is a separate department of the Federal Government prescribed by Statute to supervise and which the development of the scheduled areas and the tribals in the different provinces and to furnish such advice and guidance as may be needed, the pace of progress of the tribes will not be sufficiently swift. The Central Government have already recognised the need for a Directorate of Anthropological Survey and we recommend that provision for a Central Department of Tribal Welfare should be made in the Constitution.

6. **Recruitment to Armed Forces.**—We are also of the view that special attention should be paid to the recruitment of the tribes to the armed forces of India. The tribes people can in our opinion furnish valuable material for this purpose as experience in the last war goes to show.

7. **Village and Tribal Headmen.**—During the course of our enquiry many complaints of oppression and mishandling of the tribes people by the hereditary chiefs or heads of villages like the Mustadars Bissois and Paros and Muthadars of South Orissa, the Parganaits and Pradhans of the Santal Parganas and the Mankis and Mundas of Singhbhum have reached us. We are of the view that a general review of the powers and functions of such village or tribal heads should be undertaken by Provincial Governments with a view to removing the grievances of the tribal villagers, the abolition of powers which are exercised in an oppressive manner and the general reform of these ancient systems.

8. **Non-official welfare organisations.**—We recommend that the Provincial Governments should utilise the services of approved non-official organisations which are at present doing welfare work in the provinces for the tribals or which may hereafter come into existence by giving them grants-in-aid with a view to supplementing the volume of development work.

9. **Officials to learn tribal languages.**—We have found that officials posted to aboriginal areas rarely know the local language. This obviously does not conduce to satisfactory administration and we are of the view that it should be made compulsory for officials posted to the aboriginal areas to obtain a working knowledge of the language within a reasonable period. Proficiency in these languages or dialects should be encouraged by the grant of suitable awards.

Yours truly,

A. V. THAKKAR,

Chairman,

Excluded & Partially Excluded Areas.

(*other than Assam*) *Sub-Committee.*

Members—

RAJ KRUSHNA BOSE.

PHUL BHAN SHAH (Subject to Minute of Dissent).

JAIPAL SINGH.

The percentage of Tribal population on to the total population in 6 Districts of Bihar and of the Christian population to that of the Tribal population.

Name of District.	Total population.	Tribal population.	Percentage.	Christian Tribal population.	Percentage.
1. Santhal Parganas . .	22,34,500	11,29,885	50·5	23,205	2·05
2. Hazaribagh . . .	17,51,300	4,78,253	27·8	2,593	54
3. Ranchi	16,75,400	11,73,142	70·0	2,85,200	4·31
4. Palamau . . .	9,12,700	3,23,106	35·4	10,786	3·34
5. Manbhum . . .	20,32,100	6,78,126	33·3	1,354	0·19
6. Singhbhum . . .	11,44,700	6,68,597	58·4	17,775	2·65
TOTAL .	97,50,700	44,51,109	45·65	3,40,913	7·66

MINUTE OF DISSENT

I submitted a dissenting minute against the provisional report which had included recommendations for those tribal areas also which had then not been visited. After the visit of the Sub-Committee to these areas, I am more than confirmed in my opinion that all the six districts of the Chhota Nagpur Plateau, namely, Manbhum, Singhbhum, Palamau, Hazaribagh, Ranchi and the Santhal Parganas, should remain "Scheduled Areas". All the witnesses were emphatic that the Chhota Nagpur Division as a whole should be scheduled and no district or territory should be excluded from the scheduled status. Even Dr. Sachchidananda Sinha, whose Memorandum has received such attention from the other members of the Sub-Committee, has admitted that for administrative reasons all the six districts should be scheduled. I have other reasons also for the same insistence but the most vital one is the necessity of protecting 1,479,485 Adibasis of the districts of Manbhum, Hazaribagh and Palamau with the veto of the Tribes Advisory Council. This 1941 Census figure is large enough to justify the claim that 15 lakhs of Adibasis should not be exposed to the dangers of General Administration.

Partially Excluded Areas in Mirzapur District.—The tribal tract in Mirzapur district should be transferred to the Scheduled Area of the Chhota Nagpur Plateau. Administratively as well as geographically, the Bihar Government would be in a better position to manage this far-off corner of the United Provinces.

Chittagong Hill Tracts.—The Indian Government must claim back the Chittagong Hill Tracts. The Radcliffe Award must be altered in regard to them.

JAIPAL SINGH.

Sept. 25th, 1947.

Note by Chairman on Minute of Dissent by Shri Jaipal Singh

I do not think that any witnesses whom the Committee examined were explained our proposal that was under contemplation by the Committee about "Scheduling" of certain areas in some provinces. "Scheduling" has a certain special meaning which was not explained to nor known by witnesses at all, not even to Dr. Sachchidananda Sinha. Therefore they could not distinguish between "Schedule and non-schedule" areas in which Tribes reside. Therefore the statement that, all the witnesses were emphatic that the Chhota Nagpur Division as a whole should be scheduled and that no District or territory should be excluded from the "Scheduled States" is incorrect, at any rate, very highly exaggerated.

The Tribal people in Manbhum District form only 33·3 per cent. of the total population. In Hazaribagh 27·8 is the similar percentage. The Latehar Sub-Division of the Palamau District has been recommended by the Sub-Committee as "Schedule". But in the Sadar Sub-Division the percentage is only 26·0. Moreover there are very small compact areas in the two districts mentioned above and in the Sadar Sub-Division of Palamau District which have a Tribal population of more than 40 per cent of the total population, the tribal people have assimilated themselves with the rest of the population so as to be indistinguishable in those areas. It is not therefore necessary to "schedule" the districts of Manbhum and Hazaribagh and the Sadar Sub-Division of Palamau District for the small percentage of the Tribal people who are dispersed among the rest of the population, and thus to brand these 2½ districts as backward.

As has already been shown in the body of the report the area of Dudhi Tahsil and parts of Robertsganj are too small to be made a Scheduled Area. It is a very fantastic proposal to detach this area from the United Provinces and to tag it on to Bihar Province. It requires no argument to say that this proposal can form no part of this Committee's proposal.

Chittagong Hill Tracts is a purely 97 per cent Buddhistic or non-Muslim area and this Committee would have been too glad, had it formed a part of West Bengal but as the Boundary Commission gave its decision to the contrary and it was accepted by both the Dominions of India and Pakistan. The Committee has been very sorry to know this decision but the award of the Boundary Commission is unalterable.

A. V. THAKKAR,

Delhi, 25th Sept. 1947.

Chairman.

MINUTE OF DISSENT

The Sub-Committee submitted a provisional report prior to visiting Bihar. While submitting that report I raised a question to the effect that all districts of Chhota Nagpur Division and Santhal Pargana should be included as Scheduled Areas. During Bihar tour evidence adduced before the Sub-Committee strongly confirmed my contention that the aforesaid areas deserve to be included as Scheduled Areas. The evidence including that of Dr. Sachchidananda Sinha strongly support this contention. Inclusion of the aforesaid tracts as scheduled Areas is strongly warranted.

The 13th October, 1947.

D. N. SAMANTA.

[Annexure X]

APPENDIX D

Joint Report of the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee and the North East Frontier (Assam) Tribal and Excluded Areas Sub-Committee of the Advisory Committee

In accordance with the ruling of the Chairman, Advisory Committee, we have held a joint meeting of our two sub-committees. Separate reports have already been submitted by us which in the case of the Assam Sub-Committee contains final recommendations, and in the case of the other Sub-Committee is final for the Provinces of Madras, Bombay, Bengal, the Central Provinces and Orissa, and is provisional for Bihar, the United Provinces and the Punjab which have yet to be visited or in respect of which witnesses are yet to be examined. The report of the latter Sub-Committee contains however the framework of the proposals likely to be adopted finally. Although that report is not final for all Provinces, this joint report is being submitted so that the recommendations could be taken into consideration by the Advisory Committee, if this is necessary, before the final report is available towards the end of September. We would further point out that the position of the excluded and partially excluded areas has undergone a change with the coming into operation of the Indian Independence Act and the adapted Constitution of 1935. Under the Indian Independence Act so much of the provisions of the Government of India Act, 1935 as requires a Governor to act in his discretion or exercise his individual judgment ceases to have effect from the 15th of August. The partially excluded areas are represented in the legislatures, however inadequately, but in the case of the excluded areas the change implies that they are brought under the jurisdiction of the Ministry without representation in the legislature. Taking into account the past history of these tracts, the needs and susceptibilities, of the people and other factors, it appears desirable that the Provincial Governments should at least be aware of our recommendations as soon as possible so that their policy may be guided thereby even if other steps are not found necessary in the Constituent Assembly for their implementation at an early date. We recommend that Provincial Governments should be advised to take such action as the establishment of District Councils and Tribal Advisory Councils as may be possible immediately to give effect to the policy recommended by us and to make such statutory regulations for this purpose as may be necessary.

2. Coming to the actual recommendations made by the two Sub-Committees, we are of the view that although certain features are common to all these areas, yet the circumstances of the Assam Hill Districts are so different that radically different proposals have to be made for the areas of this Province. The distinguishing feature of the Assam Hills and Frontier Tracts is the fact that they are divided into fairly large districts inhabited by single tribes or fairly homogenous groups of tribes with highly democratic and mutually exclusive tribal organisation and with very little of the plains leaven which is so common a feature of the corresponding areas, particularly the partially excluded areas of other Provinces. The Assam Hill Districts contain as a rule, upwards of 90 per cent. of tribal population whereas, unless we isolate small areas, this is generally not the case in the other Provinces. The tribal population in the other Provinces has moreover assimilated to a considerable extent the life and ways of the plains people and tribal organisations have in many places completely disintegrated. Another feature is that some of the areas in Assam like the Khasi Hills or the Lushai Hills, show greater potentialities for quick progress than tribes in the other Provinces. They may also be distinguished by their greater eagerness for reform in which they have a dominant

share than the apathy shown by the tribals of some other Provinces. Having been excluded totally from ministerial jurisdiction and secluded also from the rest of the Province by the Inner Line system, a parallel to which is not to be found in any other part of India, the excluded areas have been mostly anthropological specimens; and these circumstances together with the policy of officials who have hitherto been in charge of the tracts have produced an atmosphere which is not to be found elsewhere. It is in these conditions that proposals have been made for the establishment of special local councils which in their separate hill domains will carry on the administration of tribal law and control the utilisation of the village land and forest. As regards the features common to tribal areas in other Provinces, the Assam hillman is as much in need of protection for his land as his brother in other Provinces. He shares the backwardness of his tract and in some parts the degree of illiteracy and lack of facilities for education, medical aid and communications. Provision is necessary for the development of the hill tracts in all these matters and we have found it necessary to recommend constitutional safeguards of various kinds.

3. The differences between Assam and other areas as well as certain common features have been indicated above. While in Assam the Hill Districts present features of their own and the Assam Sub-Committee have confined their recommendations on the whole to these tracts, it has not been possible for the other Sub-Committee to deal with the problems of the tribes in exactly the same manner. The special features of the hills have been mentioned and they distinguish almost to the same degree the tribesmen in the hill and the tribesmen in the plains of Assam as they do the regular plains inhabitants. The total population censussed as tribal in the plains of Assam is about 1·5 million out of which possibly some 50 per cent. consists of tea-garden labour, drawn in part from other provinces. This portion of the plains tribals is of course a population which has assimilated in high degree the life of the plains. The stable population of plains tribals is more or less in the same position. As regards other Provinces, the degree of assimilation is on the whole greater whether the tribesman is found in the hills or in the more accessible parts although some of the small tribes in the Agency Tracts of Orissa and Madras have hardly come into contact with the plains. In any case their outlook is totally different From the very manner in which partially excluded areas have been formed it has not been possible to include large numbers of tribals who are scattered about in the Provinces irrespective of whether their condition was advanced or otherwise. It has been necessary therefore to treat all persons of tribal origin as a single minority and not separately as in the case of Assam. In this method of treatment therefore the recommendations for other Provinces differ radically from the proposals for Assam. The excluded and partially excluded areas however contain considerable concentrations of tribes people and generally they are in hilly and comparatively inaccessible areas with no communications and facilities for the development of the population. Land for them also is a vital factor and protection of the tribals' land is an essential need. The financial requirements of the Scheduled Areas are considerable, and the Centre will have to come to the assistance of certain Provinces at any rate. Thus the essential features of the proposals for the tribals of Provinces other than Assam are proportionate representation for the tribals as a whole in the Legislature, the scheduling of certain areas as in need of special attention and in which the protection of land and the social organisation of the tribals is an indispensable need. To facilitate the proper administration of the tribes, a Tribes Advisory Council with statutory functions is recommended for the Provinces of Madras, Bombay, the Central Provinces, Bihar, West Bengal and Orissa; and the application of provincial legislation to the Scheduled Areas is linked up with this Advisory Council.

4. The common proposals for Assam and other Provinces is that of provision of funds by the Centre and a separate financial statement in the budget for the Hill Districts (Assam) and the Scheduled Areas (other Provinces). The inclusion of provisions for the control of moneylenders is another common feature.

5. We have attached copies of the Appendices* to the separate reports which indicate the legal provisions necessary and a summary† of the recommendations of both the Sub-Committees.

6. We recommended that the plains tribals of Assam§ should be recognised as a minority and should be entitled to all the privileges of a minority including representation in the legislatures in proportion to population and in the services; and that their land should be protected.

7. Subject therefore to the special provisions for the representation of the Hill Districts of Assam, all tribals should be recognised as a minority for the purposes of representation in the legislatures and in the services.

G. N. BARDOLOI, *Chairman*,
N. E. F. (*Assam*)
Tribal & Excluded Areas
Sub-Committee.

A. V. THAKKAR, *Chairman*,
Excluded & Partially
Excluded Areas (Other
than Assam)
Sub-Committee.

Dated New Delhi, the 25th August 1947.

[Annexure XI]

APPENDIX D

Appendix A to Part I of North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee Report

A. (1) The areas included in Schedule A to this part shall be autonomous districts.

(2) An autonomous district may be divided into autonomous regions.

(3) Subject to the provisions of Section P the Government of Assam may from time to time notify any area not included in the said schedule as an autonomous district or as included in an autonomous district and the provisions of this Part shall thereupon apply to such area as if it was included in the said schedule.

(4) Except in pursuance of a resolution passed by the District Council of an autonomous district in this behalf the Government of Assam shall not notify any district specified or deemed to be specified in the schedule or part of such district, as ceasing to be an autonomous district or a part thereof.

B. (1) There shall be a District Council for each of the areas specified in schedule A. The Council shall have not less than twenty nor more than forty members, of whom not less than three-fourths shall be elected by universal adult franchise.

Note.— If adult franchise is not universally adopted this provision will have to be altered.

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*For the relevant Appendices of the Report of the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee, See pages 33-34 of the original reports.

† See page 63 of the original report.

§This means that Tea-garden labour and *ex* tea-garden labour which consists of tribals from provinces other than Assam are excluded.

(2) The constituencies for the elections to the District Council shall be so constituted if practicable that the different tribals or non-tribals, if any, inhabiting the area shall elect a representative from among their own tribe or group:

Provided that no constituency shall be formed with a total population of less than 500.

(3) If there are different tribes inhabiting distinct areas within an autonomous district, there shall be a separate Regional Council for each such area or group of areas that may so desire.

(4) The District Council in an autonomous district with Regional Councils shall have such powers as may be delegated by the Regional Councils in addition to the powers conferred by this constitution.

(5) The District or the Regional Council may frame rules regarding (a) the conduct of future elections, the composition of the Council, the office bearers who may be appointed, the manner of their election and other incidental matters, (b) the conduct of business, (c) the appointment of staff, (d) the formation and functioning of subordinate local councils or boards, (e) generally all matters pertaining to the administration of subjects entrusted to it or falling within its powers:

Provided that the Deputy Commissioner or the Sub-divisional officer as the case may be of the Mikir and the North Cachar Hills shall be the Chairman ex-officio of the District Council and shall have powers for a period of six years after the constitution of the Council, subject to the control of the Government of Assam, to annul or modify any resolution or decision of the District Council or to issue such instructions as he may consider appropriate.

C. (1) The Regional Council, or if there is no Regional Council, the District Council, shall have power to make laws for the area under its jurisdiction regarding (a) allotment, occupation or use for agricultural, residential or other non-agricultural purposes, or setting apart for grazing, cultivation, residential or other purposes ancillary to the life of the village or town, of land other than land classed as reserved forest under the Assam Forest Regulation, 1891 or other law on the subject applicable to the district:

Provided that land required by the Government of Assam for public purposes shall be allotted free of cost if vacant, or if occupied, on payment of due compensation in accordance with the law relating to the acquisition of land; (b) the management of any forest which is not a reserve forest; (c) the use of canal or water courses for the purposes of agriculture; (d) controlling, prohibiting or permitting the practice of jhum or other forms of shifting cultivation; (e) the establishment of village or town committees and councils and their powers; (f) all other matters relating to village or town management, sanitation, watch and ward.

(2) The Regional Council or if there is no Regional Council, the District Council shall also have powers to make laws regulating (a) the appointment or succession of chiefs or headmen; (b) inheritance of property; (c) marriage and all other social customs.

D. (1) Save as provided in Section F the Regional Council, or if there is no Regional Council, the District Council, or a court constituted by it in this behalf shall have all the powers of a final court of appeal in respect of cases or suits between parties, all of whom belong to hill tribes, in its jurisdiction.

(2) The Regional Council, or if there is no Regional Council the District Council may set up village Councils or Courts for the hearing and disposal of disputes or cases other than cases triable under the provisions of Section

F, or cases arising out of laws passed by it in the exercise of its powers, and may also appoint such officials as may be necessary for the administration of its laws.

E. The District Council of an autonomous district shall have the powers to establish or manage primary schools, dispensaries, markets, cattle pounds, ferriers, fisheries, roads and waterways and in particular may prescribe the language and manner in which primary education shall be imparted.

F. (1) For the trial of acts which constitute offences punishable with imprisonment for five years or more or with death, or transportation for life under the Indian Penal Code or other law applicable to the district or of suits arising out of special laws or in which one or more of the parties are non-tribals, the Government of Assam may confer such powers under the Criminal Procedure Code or Civil Procedure Code as the case may be on the Regional Council the District Council or Courts constituted by them or an officer appointed by the Government of Assam as it deems appropriate and such courts shall try the offences or suits in accordance with the Code of Criminal Procedure or Civil Procedure as the case may be.

(2) The Government of Assam may withdraw or modify powers conferred on the Regional Council or District Council or any court or officer under this section.

(3) Save as provided in this section the Criminal Procedure Code and the Civil Procedure Code shall not apply to the autonomous district.

NOTE.—"Special Laws"—Laws of the type of the law of contract, company law or insurance etc. are contemplated.

G. (1) There shall be constituted a District or Regional Fund into which shall be credited all moneys received by the District Council or Regional Council as the case may be in the course of its administration or in the discharge of its responsibilities.

(2) Rules approved by the Comptroller of Assam shall be made for the management of the Fund by the District or Regional Council and management of the Fund shall be subject to these rules.

H. (1) A Regional Council, or if there is no Regional Council the District Council shall have the following powers of taxation:

(a) subject to the general principles of assessment approved in this behalf for the rest of Assam, land revenue (b) poll tax or house tax.

(2) The District Council shall have powers to impose the following taxes, that is to say (a) a tax on professions, trades or calling, (b) a tax on animals, vehicles, (c) toll tax, (d) market dues, (e) ferry dues, (f) cesses for the maintenance of schools, dispensaries or roads.

(3) A Regional Council or District Council may make rules for the imposition and recovery of the taxes within its financial powers.

I. (1) The Government of Assam shall not grant any licence or lease to prospect for or extract minerals within an autonomous district save in consultation with the District Council.

(2) Such share of the royalties accruing from licences or leases for minerals as may be agreed upon shall be made over to the District Council. In default of agreement such share as may be determined by the Governor in his discretion shall be paid.

J. (1) The District Council may for the purpose of regulating the profession of moneylending, or trading by non-tribals in a manner detrimental to the interests of the tribals make rules applicable to the district or any portion of it: (a) prescribing that except the holder of a licence issued by

the Council in this behalf no person shall carry on moneylending, (b) prescribing the maximum rate of interest which may be levied by a moneylender, (c) providing for the maintenance of accounts and for their inspection by its officials, (d) prescribing that no non-tribal shall carry on wholesale or retail business in any commodity except under a licence issued by the District Council in this behalf:

Provided that no such rules may be made unless the District Council approves of the rules by a majority of not less than three fourths of its members:

Provided further that a licence shall not be refused to moneylenders and dealers carrying on business at the time of making of the rules.

K. (1) The number of members representing an autonomous district in the Provincial Legislature shall bear at least the same proportion to the population of the district as the total number of members in that Legislature bears to the total population of Assam.

(2) The total number of representatives allotted to the autonomous districts which may at any time be specified in Schedule A in accordance with Sub-section (1) of this Section shall not be taken into account in reckoning the total number of representatives to be allotted to the rest of the Province under the provisions of Section ..... of the Provincial Constitution.

(3) No constituencies shall be formed for the purpose of election to the Provincial Legislature which include portions of other autonomous districts or other areas, nor shall any non-tribal be eligible for election except in the constituency which includes the Cantonment and Municipality of Shillong.

L. (1) Legislation passed by the provincial legislature in respect of (a) any of the subjects specified in section C or (b) prohibiting or restricting the consumption of any non-distilled alcoholic liquor, shall not apply to an autonomous district.

(2) A Regional Council of an autonomous district or if there is no Regional Council, the District Council may apply any such law to the area under its jurisdiction, with or without modification.

M. The revenue and expenditure pertaining to an autonomous district which is credited to or met from the funds of the Government of Assam shall be shown separately in the annual financial statement of the Province of Assam.

N. There shall be paid out of the revenues of the Federation to the Government of Assam such capital and recurring sums as may be necessary to enable that Government—(a) to meet the average excess of expenditure over the revenue during the three years immediately preceding the commencement of this constitution in respect of the administration of the areas specified in Schedule A; and (b) to meet the cost of such schemes of development as may be undertaken by the Government with the approval of the Federal Government for the purpose of raising the level of administration of the aforesaid areas to that of the rest of the province.

O. (1) The Governor of Assam may at any time institute a commission specifically to examine and report on any matter relating to the administration or, generally at such intervals as he may prescribe, on the administration of the autonomous districts generally and in particular on (a) the provision of educational and medical facilities and communications (b) the need for any new or special legislation and (c) the administration of the District or Regional Councils and the laws or rules made by them.

(2) The report of such a commission with the recommendations of the Governor shall be placed before the provincial legislature by the Minister concerned with an explanatory memorandum regarding the action taken or proposed to be taken on it.

(3) The Governor may appoint a special Minister for the Autonomous Districts.

P. (1) The Government of Assam may, with the approval of the Federal Government, by notification make the foregoing provisions or any of them applicable to any area specified in Schedule B to this Part, or to a part thereof; and may also, with the approval of the Federal Government, exclude any such area or part thereof from the said Schedule.

(2) Till a notification is issued under this section, the administration of any area specified in Schedule B or of any part thereof shall be carried on by the Union Government through the Government of Assam as its agent.

Q. (1) The Governor of Assam in his discretion may, if he is satisfied that any act or resolution of a Regional or District Council is likely to endanger the safety of India, annul or suspend such act or resolution and take such steps as he may consider necessary (including dissolution of the Council and the taking over of its administration) to prevent the commission or continuation of such act or giving effect to such resolution.

(2) The Governor shall place the matter before the legislature as soon as possible and the legislature may confirm or set aside the declaration of the Governor.

R. The Governor of Assam may on the recommendation of a commission set up by him under section N order the dissolution of a Regional or District Council and direct either that fresh election should take place immediately, or with the approval of the legislature of the province, place the administration of the area directly under himself or the commission or other body considered suitable by him, during the interim period or for a period not exceeding twelve months:

Provided that such action shall not be taken without affording an opportunity to the District or Regional Council to be heard by the provincial legislature and shall not be taken if the provincial legislature is opposed to it.

Transitional Provisions

Governor to carry on administration as under the 1935 Act till a Council is set up, he should take action to constitute the first District Council or Regional Councils and frame provisional rules in consultation with existing tribal Councils or other representative organisations, for the conduct of the elections, prescribe who shall be the office bearers etc. The term of the first Council to be one year.

GOPINATH BARDOLOI, (*Chairman*)
J. J. M. NICHOLS-ROY.
RUP NATH BRAHMA.
A. V. THAKKAR.

Schedule B

The Khasi and Jaintia Hills District excluding the town of Shillong.
The Garo Hills District.
The Lushai Hills District.
The Naga Hills District.
The North Cachar Sub-division of the Cachar District.
The Mikir Hills portion of Nowgong and Sibsagar District excepting the mouzas of Barpathar and Sarupathar.

Schedule B

The Sadiya and Balipara Frontier Tracts.
The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract).
The Naga Tribal Area.

[Annexure XII]

APPENDIX D

SUMMARY OF RECOMMENDATIONS OF THE ASSAM SUB-COMMITTEE

District Councils should be set up in the Hill Districts (see Section B of Appendix A) with powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. This is subject to the proviso that no payment would be required for the occupation of vacant land by the Provincial Government for public purposes and private land required for public purposes by the Provincial Government will be acquired for it on payment of compensation [Para. *9—Section C (1) Appendix A.]

2. Reserved forests will be managed by the Provincial Government in questions of actual management including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the Hill People should be taken into account [Para. *10].

3. On account of its disastrous effects upon the forest, rainfall and other climatic features, jhuming should be discouraged and stopped wherever possible but the initiative for this should come from the tribes themselves and the control of jhuming should be left to the local councils. [Para. *11 and Section C of Appendix A].

4. All social law and custom is left to be controlled or regulated by the tribes. [Para. *12 and Section C (2) of Appendix A]. All criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and the Code of Criminal Procedure will not apply to such cases. As regards the serious offences punishable with imprisonment of five years or more they should be tried henceforth regularly under the Criminal Procedure Code. To try such cases, powers should be conferred by the Provincial Government wherever suitable upon tribal councils or courts set up by the district councils themselves.

All ordinary civil suits should be disposed of by tribal courts and local councils may have full powers to deal with them including appeal and revision.

Where non-tribals are involved, civil or criminal cases should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing circuit magistrates or judges. [Para. *12—Section D & F of Appendix A].

5. The District Councils should have powers of management over primary schools, dispensaries and other institutions which normally come under the scope of local self-governing institutions in the plains. They should have full control over primary education. As regards secondary school education, there should be some integration with the general system of the province and it is left open to the Provincial Government to entrust local councils with responsibility for secondary schools wherever they find this suitable. [Para. *13 and Section E of Appendix A].

For the Mikir and North Cachar Hills the District or Sub Divisional Officer, as the case may be, should be ex-officio President of the local council with powers, subject to the control of the Government of Assam, to modify or annul resolutions or decisions of the local councils and to issue such instructions as may be necessary. [Para. *13 and Section B (5) of Appendix A].

* References to paras, sections and appendices are to paras., sections and appendices in the original reports.

6. Certain taxes and financial powers should be allocated to the councils. They should have all the powers which local bodies in regulation districts enjoy and in addition they should have powers to impose house tax or poll tax, land revenue and levies arising out of the powers of management of village forest. [Section *H of Appendix A and Para. 14 (a)].

Statutory provision for a fixed proportion of provincial funds to be spent on the hill districts is not considered practicable. A separate financial statement for each hill district showing the revenue derived from the district and the expenditure proposed on it is recommended. The framing of a suitable programme of development should be enjoined either by statute or by Instrument of Instructions. [Section *M of Appendix A and Para. 14 (b)].

It is quite clear that the urgent requirements of the hill districts by way of expenditure on development schemes are beyond the resources of the Provincial Government. The development of the hill districts should be as much the concern of the Federal Government as the Provincial Government. Financial assistance should be provided by the Federation to meet the deficit in the ordinary administration on the basis of the average deficit during the past three years and the cost of development schemes should also be borne by the Central Exchequer [Section *N of Appendix A and Para. 14 (c)].

The claims of the hill district councils for assistance from general provincial revenues to the extent that they are unable to raise the necessary finances within their own powers is recognised [Para. *16 (d)].

7. If local councils decide by a majority of three-fourths of their members to license moneylenders or traders they should have powers to require moneylenders and professional dealers from outside to take out licences. [Para. *15 and Section J of Appendix A].

8. The management of mineral resources should be centralised in the hands of the Provincial Government but the right of the district councils to a fair share of the revenues is recognised. No licence or lease shall be given by the Provincial Government except in consultation with the local Council. If there is no agreement between the Provincial Government and the district council regarding the share of the revenue, the Governor will decide the matter in his discretion [Para. *16 and Section I of Appendix A].

9. Provincial legislation which deals with the subjects in which the hill councils have legislative powers will not apply to the hill districts. Legislation prohibiting the consumption of non-distilled liquors like Zu will also not apply; the district council may however apply the legislation [Para. *17 and Section L of Appendix A].

10. It is necessary to provide for the creation of regional councils for the different tribes inhabiting an autonomous district if they so desire. Regional councils have powers limited to their customary law and the management of lands and villages and courts. Regional councils may delegate their powers to the district councils [Para. *18 and Section B (4) of Appendix A].

11. The Governor is empowered to set aside any act or resolution of the council if the safety of the country is prejudiced and to take such action as may be necessary including dissolution of the local councils subject to the approval of the legislature. The Governor is also given powers to dissolve the council if gross mismanagement is reported by a commission [Para. *19 and Section Q and R of Appendix A].

12. The Central Government should continue to administer the Frontier Tracts and Tribal Area with the Government of Assam as its agent until

* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over by the Provincial Government with the approval of the Federal Government [Section *P of Appendix A and Para. 20 (a)].

The pace of extending administration should be greatly accelerated and separate officers appointed for the Lohit Valley, the Siang Valley and the Naga Tribal Area [Para. *20 (a)].

The Lakhimpur Frontier Tract should be attached to the regular administration of the district. The case of the portion of the Lakhimpur Frontier Tract recently included in the Tirap Frontier Tract should be examined by the Provincial Government with a view to a decision whether it could immediately be brought under provincial administration. A similar examination of the position in the plains portions of the Sadiya Frontier Tract is recommended. The portion of the Balipara Frontier Tract around Charduar should also be subject to a similar examination [Para. *20 (b)].

Posa payment should be continued [Para. *20 (c)].

13. The excluded areas other than the Frontier Tracts should be enfranchised immediately and restrictions on the franchise in the Garo and Mikir Hills should be removed and adult franchise introduced [Para. *21 (a) and Section B (1) of Appendix A].

Weightage is not considered necessary but the hill districts should be represented in the provincial legislature in proportion not less than what is due on their population even if this involves a certain weightage in rounding off. The total number of representatives for the hills thus arrived at [See Para. *21 (b)] should not be taken into account in determining the number of representatives to the provincial legislature from the rest of Assam [Para. *21 (b) and Section K or Appendix A].

The total population of the hill districts justifies a seat for the hill tribes in the Federal Legislature on the scale proposed in Section 11 (c) of the Draft Union Constitution [Para. *21 (c)].

Joint electorate is recommended but constituencies are confined to the autonomous districts. Reservation of seats, in view of this restriction, is not necessary [Para. *21 (d) and Section K (3) of Appendix A].

Non-tribals should not be eligible for election from hill constituencies except in the constituency which includes the Municipality and Cantonment of Shillong [Para. *21 (e) and Section K (8) of Appendix A].

14. Representation for the hills in the Ministry should be guaranteed by statutory provision if possible or at least by a suitable instruction in the instrument of Instructions or corresponding provision [Para. *22—See also Section O (3) of Appendix A].

15. Non-tribal officials should not be barred from serving in the hills but they should be selected with care if posted to the hills. The appointment of a due proportion of hill people in the services should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government [Para. *23].

16. A commission may be appointed at any time or permanently to enable the Government to watch the progress of development plans or to examine any particular aspects of the administration [Para. *24 and Section O (i) of Appendix A].

17. Plains tribals number 1·6 million. Their case for special representation and safeguards should be considered by the Minorities Sub-Committee. [Para. *25].

* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

18. The question of altering boundaries so as to bring the people of the same tribe under a common administration should be considered by the Provincial Government. The Barpathar and Sarupathar Mouzas included in the Mikir Hills should be included in the regularly administered areas henceforth [Para. *26].

19. Non-tribal residents may be provided with representation in the local councils if they are sufficiently numerous. For this purpose non-tribal constituencies may be formed if justified and if the population is not below 500 [Para. *27 and Section B (2) of Appendix A].

20. Provincial councils should be set up by the Governor of Assam after consulting such local organisations as exist. These provisional councils which will be for one year will have powers to frame their own constitution and rules for the future [Para. *29 and Transitional Provisions of Appendix A also].

[Annexure XIII]

APPENDIX D

SCHEDULE 13 TO GOVERNMENT OF INDIA (PROVINCIAL LEGISLATIVE ASSEMBLIES) ORDER, 1936

BACKWARD TRIBES

PART V—ASSAM

The following Tribes and Communities :—

1. Kachari.
2. Boro or Boro-Kachari.
3. Rabha.
4. Miri.
5. Lalung.
6. Mikir.
7. Garo.
8. Hajong.
9. Deori.
10. Abor.
11. Mishmi.
12. Dafla.
13. Singpho.
14. Khampti.
15. Any Naga or Kuki tribe.
16. Any other tribe or comm for the time being designate by the Governor in his discretion.

[Annexure XIV]

APPENDIX D

General Summary of the Reports of the Excluded & Partially Excluded Areas (other than Assam) Sub-Committee and the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee [including the Final Report of the E. & P. E. Areas (other than Assam) Sub-Committee.]

I

In provinces other than Assam, with the exception of the Laccadive Islands of Madras and the Spiti and Lahoul area of the Punjab, there are no excluded areas. In both of these excluded areas the population is not ethnically tribal. In the Laccadive Islands the islanders are Muslims of the same stock as the Moppillahs of Malabar. In Minicoy they are

* References to paras. and sections are to paras. and sections in the original reports.

believed to be of Sinhalese origin. In Spiti and Lahoul the inhabitants are of Tibetan origin. In the remaining partially excluded areas of provinces other than Assam the principal tribes to be found are Santal, Gond, Bhil, Munda, Oraon, Kondh, Ho and Savara. Many minor tribes like Korku, Pardhan, Ko, Bhumij, Warli also inhabit the areas. The total population* of all the tribes, excluding Assam, is about 13½ millions of which approximately 8 millions inhabit the partially excluded areas. With the exception of certain small tribes like the Bonda Porja and the Kutia Kondh of Orissa, all the remaining tribes have experienced varying degrees of sophistication and come into contact with people of the plains and advanced tracts. Although the tribals living in the non-excluded areas are often hard to distinguish from the plains people among whom they live, they are generally in a backward condition which is sometimes worse than the condition of the scheduled castes. It is not possible therefore to leave them out of consideration on the ground that only the tribes in the partially excluded areas need attention. All the tribes of provinces other than Assam, whether living in the plains or in the partially excluded tracts, should, as one whole be treated as a minority. As regards Assam, conditions in the hill districts of which the Naga Hills, the Lushai Hills and the North Cachar Hills have been excluded are on a totally different footing and the atmosphere, particularly in these excluded areas, is one which is not to be found elsewhere. These areas must therefore be treated separately from the rest. As regards plains tribals the total number of whom, including Sylhet, comes to approximately 1·5 million according to census figures, about seven lakhs are tea-garden labour from various parts of the country [not included in the schedule B to the Government of India (Legislative Assemblies Order) 1936] are not to be taken into account as tribes of Assam. The tribal population of the excluded and partially excluded areas comes to about 8½ lakhs. In Assam there are in addition the frontier tracts and tribal areas in which conditions of settled administration prevail only to a very small extent and large areas cannot be said to be under regular administration at all. Even now, in the northern frontier tracts, Tibetan tax-collectors make inroads and, in the Naga tribal area, head-hunting goes on. The administration of these areas still involves contact with foreign States and problems of defence.

2. The areas inhabited by the tribes, whether in Assam or elsewhere, are difficult of access, highly malarial and infested also in some cases by other diseases like yaws and venereal disease and lacking in such civilizing facilities as roads, schools, dispensaries and water supply. The tribes themselves are for the most part extremely simple people who can be and are exploited with ease by plainsfolk resulting in the passage of land formerly cultivated by them to money-lenders and other erstwhile non-agriculturists. While a good number of superstitions and even harmful practices are prevalent among them the tribes have their own customs and way of life with institutions like tribal and village panchayats or councils which are very effective in smoothing village administration. The sudden disruption of the tribals customs and ways by exposure to the impact of a more complicated and sophisticated manner of life is capable of doing great harm. Considering past experience and the strong temptation to take advantage of the tribals simplicity and weaknesses it is essential to provide statutory safeguards for the protection of the land which is the mainstay of the aboriginal's economic life and for his customs and institutions which, apart from being his own, contain elements of value. In making provisions however allowance could be made for the fact that in the non-

*Including Assam, the total population of the tribes in the provinces is 15·9 millions.

excluded areas the tribals have assimilated themselves in considerable degree to the life of the people with whom they live and the special provisions concerning legislation in particular are therefore proposed largely for the schedule areas [provinces other than Assam; see page *33 of this volume] and the autonomous districts [(Assam) Para. *13 of Report and Section *A of Appendix A on p. 19 of Report].

3. Although in the case of the autonomous districts of Assam a distinction has been made, the proposals in the main contemplate that tribals should be treated as a minority in the matter of representation in the legislatures and recruitment to the various services of the Central and Provincial Governments. In the case of the tribals of provinces other than Assam reserved representation in the provincial and Federal Legislatures (House of the People) in proportion to the total tribal population of the Province is recommended by joint electorate. In the case of Assam similar reservation of representation for the plains tribals (excluding tea-garden labour) is recommended. In the case of the hill districts, in view of their small and exclusive populations it is recommended that representation should be provided in proportion to the population out in such a way that all fractions of a lakh are taken as one lakh even though this might involve a small weightage. In the Federal Legislature (House of the People) the autonomous hill districts should have a representative. The plains tribals should have representation in the House of the People also on the basis of their population. In all cases election by adult franchise is recommended and indirect election or nomination should not be resorted to. There should be special representation as follows:-

Laccadive	Group	—1.
Amindivi	Group	—1.
Minicoy	Island	—1.
Lahaul &	Spiti	—1.

(Para. *9 of Interim Report of Other Than Assam Sub-Committee and Para. *21 of Assam Sub-Committee Report; see also Para. 6 of Joint Report).

Non-tribals will not be eligible for elections from hill constituencies to the provincial legislature except the constituency which includes the municipality of Shilling [Para. *21 (e) and Sec. K (8) of App. A of Assam Report]. Constituencies may not be so made as to extend outside the boundaries of autonomous districts [Para. *21 (d) and Sec. K (3) or App. A, Assam Report].

4. There should be a department under the Federal Government in order to supervise and watch the development of the tribals in the different provinces and to furnish such advice and guidance as may be needed [Para. *5 of Final Report of Other Than Assam Sub-Committee].

5. The areas inhabited by the tribes are hilly and difficult country, to develop which is likely to be beyond the resources of some Provincial Governments. The Federation should therefore provide the necessary funds for the execution of approved schemes of development [Para. *17 of Interim Report and Sec. *I & K (2) of App. C of Other Than Assam Sub-Committee, also para. *14 (c) and Sec. N of App. A of Assam Sub-Committee Report]. In the case of Assam, the Federation should also meet the average deficit of the autonomous districts during the three years preceding the commencement of the Constitution [Para. *14 (c) and Sec. *N of App. A of Assam Report].

* References to paras., sections and pages are to paras., sections and pages in the original reports.

6. The Central Government should also be in a position to require the Provincial Governments to draw up and execute schemes for the scheduled areas [Para. *17 of Interim Report and Sec. I & K (2) of App. C of Other Than Assam Sub-Committee].

7. The Federal Government should institute a special commission after ten years to enquire into the progress of the scheduled areas and the tribes [Para. *16 and Sec. K (1) of App. C of Other Than Assam Sub-Committee Report].

8. In provinces other than Assam, excepting the U. P. and the Punjab, a Tribes Advisory Council containing, to the extent of three-fourths of its membership, elected members of the provincial legislatures is recommended. The Council shall have not less than ten or more than twenty-five members [Para. *15 and Sec. J of App. C of Other Than Assam Sub-Committee Report]. For U. P. and the Punjab an advisory committee containing representatives of the tribal or backward class concerned to the extent of two thirds is recommended [Paras. *3 & 4 of Final Report; see also para. *18 of this Summary for details of U. P. Committees]. For Assam there is provision for the Governor to appoint either a permanent or an *ad hoc* commission to report or keep the Government in touch with the administration of the autonomous districts [Para. *24 & Sec. O (1) of App. A of Assam Sub-Committee Report].

9. The hill districts of Assam are to be designated as autonomous districts and special district councils should be set up for each of them. The district councils will have powers of legislation over (a) occupation or use of land other than land comprising reserved forest, (b) the management of forest other than reserved forest, (c) the use of canals and water courses for the purposes of agriculture, (d) control of jhum cultivation, (e) establishment of village and town committees and (f) village management in general. Reserved forests will be managed by the Provincial Government [Paras. *9 to 13 of Assam Sub-Committee Report].

The district council will have powers of management of all institutions which normally come under the scope of local self-government in the plains and will have full control over primary education [Para. *13 and Sec. E of App. A of Assam Sub-Committee Report].

The district council will also have powers to make its own rules and regulations regarding its own constitution [Sec. *B (5) of App. A of Assam Sub-Committee Report].

The district council will have powers to make laws affecting (a) appointment and succession of Chiefs, (b) inheritance of property councils [Para. *18 & Sec. B (3) of App. A of Assam Sub-Committee Report].

District councils and regional councils can set up courts with full powers to deal with all civil suits other than those arising out of special laws and offences punishable under the Penal Code with imprisonment of less than five years in accordance with local or tribal custom except where non-tribals are involved. (Para. *12 & Sec. D & F. of App. A of Assam Sub-Committee Report).

Where there are different tribes in a district and they wish to manage their own affairs regional councils may be set up. Regional councils have powers limited to their customary law and the management of land villages and courts. Regional councils may delegate their powers to district councils [Para. *18 & Sec. B (3) of App. A of Assam Sub-Committee Report].

* References to paras., sections and pages are to paras., sections and pages in the original reports.

The district and regional councils (Assam Hill Districts) will have powers to levy land revenue, house tax or poll tax and other taxes levied by local self-governing institutions in the plains [Para. *14 (a) & Sec H of App. A of Assam Sub-Committee Report]. They should be assisted by provincial grants where necessary [Para. *14 (b) of Assam Report].

The District or Sub-divisional officer, as the case may be, will be *ex-officio* President of the district council of the Mikir and North Cachar Hills.

10. The district council shall be an elected body with not less than 20 or more than 40 members of whom not less than three-fourths shall be elected by universal adult franchise. Separate constituencies to be formed for separate tribes, with a population of not less than 500. Non-tribal residents of autonomous districts, if their population is not below 500, may be formed into a separate constituency for election to the district council [Para. *27 and Sec. B (1) & (2) of App. A of Assam Report].

11. In matters relating to land (provinces other than Assam), social customs and village management, if the Tribes Advisory Council advises that any law passed by the provincial legislature should not be applied to a scheduled area the Provincial Government shall direct accordingly. The Provincial Government shall have powers to direct that any other legislation shall not apply to the scheduled areas on the advice of the Council [Para. *9 & 10 and Sec. E of App. C of Other Than Assam Sub-Committee Report].

In the case of Assam legislation on these matters is left to the district council and provincial laws will not apply unless the district council applies them with or without modifications. Legislation prohibiting the consumption of non-distilled liquors will also not apply unless the district council applies it [Para. *17 & Sec. L of App. A of Assam Sub-Committee Report].

12. If the Tribes Advisory Council so advises, moneylenders in scheduled areas should not be permitted to carry on business except under a licence [Para. *26 & Sec. G of App. C of Other Than Assam Sub-Committee Interim Report].

In Assam the district council should have powers to take action to license moneylenders and non-tribal traders if the rules are approved by a majority of three-fourths of their members; this is to prevent the practice of these professions by non-tribals in a manner detrimental to the interests of tribals [Para. *15 and Sec. J of App. of Assam Sub-Committee Report].

13. Allotment of waste land in a scheduled area should not be made to non-aboriginals except in accordance with rules made by the Provincial Government in consultation with the Tribes Advisory Council [Para. *25 and Sec. F of App. C of Other Than Assam Sub-Committee Report].

14. Mineral resources in the autonomous districts of Assam will be managed by the Provincial Government but the district councils will be entitled to a share of the revenue. Licences or leases shall not be given out except in consultation with the district council [Para. *16 and Sec. I of App. A of Assam Report].

15. The Governor of Assam should be empowered to set aside any act or resolution of a district council if the safety of the country is prejudiced; he should also have powers to dissolve a council if gross mismanagement is reported by the commission [Para. *19 and Sec. Q & R of App. A of Assam Sub-Committee Report].

* References to pages, paras. and sections are to pages, paras. and sections in the original reports

In provinces other than Assam the Governor should have the special responsibility to see that schemes of development are drawn up and implemented. This should be enjoined on him by instructions [Para. *18 of Other Than Assam Report].

16. The Central Government should continue to administer the frontier tracts and tribal area with the Government of Assam as its agent until administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over with the approval of the Federal Government [Section *P of App. A and Para. 20 (a) of Assam Sub-Committee Report].

Provincial Governments (other than Assam) should have powers to make special regulations for the trial of petty criminal and civil cases in scheduled areas, with a view to simplify procedure [Section *M of App. A of Other Than Assam Report].

17. The estimated revenue and expenditure pertaining to a scheduled area or an autonomous district should be shown separately in the provincial budget [Para. *18 & Section H of App. C of Other Than Assam Sub-Committee Report and Para. *14 (b) and Section M of App. A of Assam Sub-Committee Report].

18. There shall be a separate Minister for tribal welfare in the C. P., Orissa and Bihar [Para. *20 & Section L of App. C of Other Than Assam Sub-Committee Report]. In Assam representation for the hill people in the Ministry should be guaranteed by statutory provision of possible or at least by a suitable instruction in the instrument of Instructions [Para. *22; see also Section O (3) of App. A of Assam Sub-Committee Report].

19. For the partially excluded areas of the U. P. an advisory committee consisting of tribals or backward people to the extent of two-thirds of its membership, provision to prevent the transfer of land from the aboriginals to non-aboriginals, (except with special permission) for regulations for the trial of petty civil and criminal cases by simple procedure, is recommended. The revenue and expenditure of the area should be shown separately in the provincial budget and there should be a seat reserved in the provincial assembly for a tribal from the partially excluded area of the Mirzapur District. There should also be provision for the Federal Government to call for reports from the Provincial Government regarding the administration of the areas.

Parallel provisions are recommended for Spiti & Lahoul (E. Punjab) which should have one seat in the provincial legislature. (Paras *3 & 4 of Final Report of Other Than Assam Sub-Committee).

II

OTHER RECOMMENDATIONS

20. Tribal panchayats should be encouraged wherever possible. (Para. *22 of Interim Report Other Than Assam Sub-Committee). Shifting cultivation should be discouraged [Para. *23 of Interim Report of Other Than Assam Sub-Committee & Para. *11 of Assam Sub-Committee Report]. Temperance propaganda should be carried on as part of tribal welfare work [Para. *24 of Other Than Assam Sub-Committee Report].

21. Tribals should be recruited in due proportion to all Government services. Non-tribals posted to tribal areas should be selected with care [Para. *25 of Assam Report and Para. 21 of Other Than Assam Report].

* References to appendices, paras. and sections are to appendices, paras. and sections in the original reports.

Special attention should be paid to the recruitment of tribes to the Armed Forces of India [Para. *6 of Final Report of Other Than Assam Sub-Committee].

22. The abolition of the powers of Supurdars (Dudhi area of Mirzapur District, U. P.) to accept surrender and make a reallotment of land is recommended. The system of Sayanas in Jaunsar Bawar (U. P.) should be abolished and revenue collected through officials.

23. A general review of the powers and functions of ancient systems of village or tribal headmen should be undertaken with a view to removing the grievances of tribals and the abolition of oppressive powers and general reform [Para. *7 of Final Report of Other Than Assam Sub-Committee].

24. Provincial Governments should utilise the services of approved non-official organisations doing welfare work among the tribals, with a view to adding to the volume of development work, by giving them grants-in-aid [Para. *8 of Final Report of Other Than Assam Sub-Committee].

25. It should be made compulsory for officials posted to aboriginal tracts to obtain a working knowledge of the local language within a reasonable period.

26. Posa payments to the frontier tribes should be continued [Para. *20 (c) of Assam Sub-Committee Report].

The pace of extending administration in the frontier tracts should be greatly accelerated and additional officers appointed where necessary [Para. *20 (a) of Assam Sub-Committee Report].

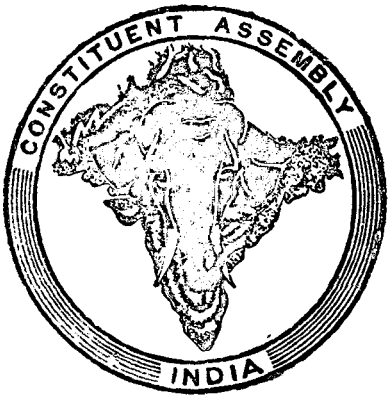
The Provincial Government should undertake an examination of the position in the frontier tracts with a view to taking a decision whether any portion could be taken immediately by it under provincial administration [Para. *20 (b) of Assam Sub-Committee Report].

NOTE.—The contents of Appendix A of the Assam Report [page 19] and of Appendix *C [page 33] of this volume must be studied for a full picture of the constitutional provisions recommended. [See also pages *300—32 for Schedule of tribes.]

* References to pages, paras. and sections are to pages, paras. and sections in the original reports.

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Volume VII
No. 2

Friday
5th November
1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Price 5 annas

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 5th November 1948

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following members took the Pledge and signed the Register:

1. Mr. Mohamed Ismail Sahib (Madras: Muslim).
2. Shri P. S. Rau (Jodhpur).

MOTION *re* DRAFT CONSTITUTION—(*contd.*)

Mr. President: I have received an amendment to the Honourable Dr. Ambedkar's motion from Seth Domodar Swarup which is more or less of the same nature as that which was moved by Maulana Hasrat Mohani yesterday, but as it is slightly different I will allow him to move it. I propose that members should have limited time for speaking on this motion. I understand there are many members who desire to participate in the discussion and I therefore suggest that we might sit to-day and to-morrow for general discussion instead of to-day only, and to-morrow we will finally dispose of the motion moved by Dr. Ambedkar. Then I will give two days *i.e.* Sunday and Monday for amendments, and from Wednesday we will sit and take up the Articles one after another. To enable the largest number of members to participate in the discussion today I think ten minutes would be enough for each member, and if the House approves of it I should like to stick to that time limit.

Shri T. T. Krishnamachari (Madras: General): Sir, in anticipation of Saturday being a holiday some of us have entered into other engagements like meetings of Select Committees on Bills.

Mr. President: I am afraid I have no information about meetings of committees, etc., and I should have been consulted about the fixation of these meetings while the Assembly was going to sit. Therefore I propose to give priority to meetings of this House.

Shri T. T. Krishnamachari: Sir, while the fixing of a time limit is no doubt desirable, I submit that in a matter of such importance even if one deals with only one aspect of the subject it is not possible to say anything relevant or to the point in ten minutes. Therefore I humbly suggest that such a time limit should not be adhered to. Otherwise the discussion will be stifled and nobody can make any point. I have something to say myself on the financial provisions.

Mr. President: If I find that any particular member is making a useful contribution to the debate I will relax the time limit in his favour.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, I should like to suggest that two or three more days may be given for the general discussion because in considering the Draft Constitution the general discussion will be a very important feature of the thing and members can know the feelings of people from different parts of the country on different aspects of

[Pandit Lakshmi Kanta Maitra]

the Constitution. That will help us greatly in drafting our amendments and deciding whether to move or not to move particular amendments. As a matter of fact even for ordinary legislation two or three days are always given. In the Finance Bill which operates only for one year five or six days are given for the general discussion. Here if you give us two or three days more the time will not be lost. That will give us an idea as to the direction in which the minds of different members are working on different aspects of the question. So I suggest that you may be pleased to give us two or three days more for the general discussion.

Shri K. Hanumanthaiya (Mysore State): Sir, in a house of three hundred members two days are hardly sufficient. It is only about ten members who can speak and it would not allow all sections to participate in the debate. Even five days would hardly be enough.

The Honourable Shri K. Santhanam (Madras: General): Sir, I suggest that a discussion of the entire Constitution will not be of much use. It will not be possible for any one to make any useful contribution in less than 45 minutes or one hour. So I suggest that as we take up each para. we may have a short general discussion on that para. and then proceed to pass it. In that way we can have a useful general discussion than if the debate ranges over the entire constitution.

Mr. President: I think we had better not take any more time in discussing how we shall proceed. Let us proceed and we shall see.

Shri B. Das (Orissa: General): Sir, I wish to support the suggestion made by my friend Shri Santhanam. I wish to point out, however, that several documents have not been made available to members as yet. For instance, the report of the Boundary Committee we have not received so far. Then certain documents were available to the Drafting Committee which the House has a right to see. For instance, there are the opinions of the provincial Governments on the draft constitution, the views of the High Courts and the Federal Court on the various provisions about the judiciary. There are legal aspects of many issues which we must know and the views of the High Courts and Federal Court are therefore very important; these documents should therefore be made available to us; then only we can carry on further discussion.

Mr. President: We shall try to supply members with copies of opinions of provincial Governments, High Courts and such other important bodies, say by Monday or Tuesday next.

Shree R. K. Sidhwa (C. P. and Berar: General): On a point of information, Sir. You said that you will allow Seth Damodar Swarup to move the motion of which he has given notice. Yesterday, Maulana Hasrat Mohani moved a similar motion. May I know whether this motion will be taken up independently of the general discussion for which you have allowed two days?

Mr. President: I shall take votes on the adjournment motion immediately after discussion on these two propositions is over and then we shall proceed with the general discussion.

Shri H. V. Kamath (C. P. and Berar: General): I have given notice of an amendment to the original motion.

Mr. President: We will take it up when we have finished the adjournment motion.

Maulana Hasrat Mohani (United Provinces: Muslim): It has been published in the 'Statesman' of the 4th November that the Preamble will be debated and put to vote last. I understood from the observation made by you that you will adopt that course. If this is so,.....

Mr. President: I am not concerned with what the newspapers publish.

Maulana Hasrat Mohani: You stated in your observations yesterday that this matter will be decided now and that it should not be taken up again. Do you mean that the Preamble will be taken up now?

Mr. President: I never said anything about the Preamble or any part of the Constitution.

Maulana Hasrat Mohani: I want to move the amendment to the Preamble at this stage.

Mr. President: No amendment to the Preamble or any part of the Constitution can be taken up at this stage. We shall take up all amendments in due course.

Shri Damodar Swarup Seth (United Provinces: General): *[Mr. President, with your permission I want to place this amendment before the House:

"Whereas the present Constituent Assembly was not elected on the basis of adult franchise and whereas the final constitution of free India should be based on the will of the entire people of India, this Constituent Assembly resolves that while it should continue to function as Parliament of the Indian Union, necessary arrangements should be made for convening a new Constituent Assembly to be elected on the basis of adult franchise and that the Draft Constitution prepared by the Drafting Committee be placed before it for its *consideration and adoption with such amendments as it may deem necessary.*"

Sir, before speaking on this amendment I deem it necessary to point out that I had given notice of a separate resolution to the effect that the consideration of the Draft Constitution should for the time be postponed. But unfortunately for some reason that resolution of mine has not been admitted. Therefore I have no option but to move an amendment for the same purpose as the resolution.

Sir, yesterday when Maulana Hasrat Mohani Sahib moved his amendment, it was with regret that I noted that some honourable members of this House were mocking at it and were in a way playing with it.]

Shri S. Nagappa (Madras: General): Mr. President, I would like to know from the honourable member who is moving this motion whether, when he was elected to this august body, he did not recognise this as a sovereign body competent to act as the Constituent Assembly? If not why did he agree to become a member? (*Laughter.*)

Mr. President: That is not a point of order.

Shri S. Nagappa: I would like to know whether he is in order in saying that this body is not a Constituent Assembly and that a new Assembly should be constituted on the basis of adult franchise.

Mr. President: He is in order in moving his motion. (*Renewed laughter*)

Shri Damodar Swarup Seth: *[Sir, I was saying that it is easy to ridicule a resolution or amendment or to ridicule the views of its supporters but it requires some courage to understand the reality and to appreciate it. I am afraid that this amendment of mine may displease some of my friends. But everyone has a duty to perform. It is the duty of every man unhesitatingly and fearlessly to give expression to the voice of his conscience and nature before his fellow beings regardless of the consequences that may follow or of the opinion people may form about him and this because I believe, Sir, that in the lives of nations as in the lives of individuals also there is sometimes a situation in which they have to swallow the bitterest pill. I think that the consideration of the Draft Constitution has brought such an

*] Translation of Hindustani speech.

[Shri Damodar Swarup Seth]

occasion in our country and therefore we need not worry about our views being welcome or unwelcome to one person or the other. We have to perform our duty. I shall at first try to throw light on the representative character of this Constituent Assembly which is assembled here and which is going to consider the Draft Constitution and to pass it.

Sir, the first characteristic which a constitution-making body of a free country should possess is that it should be able to claim that it represents the will of the entire people of that country. Sir, with your permission I would put it to the Honourable Members present in this House whether they can sincerely claim that they represent, in this House, the entire people of India. I can emphatically say that this House cannot claim to represent the whole country. At the most it can claim to represent that fifteen per cent of the population of India who had elected the members to the provincial legislatures. The election too, by virtue of which the members of this House are here, was not a direct one, they are here by virtue of an indirect election. In these circumstances, when eighty-five per cent of the people of the country are not represented in this House and when they have no voice here, it will be in my opinion a very great mistake to say that this House is competent to frame a Constitution for the whole country. Besides the representative character of the Draft Constitution that is being placed before the house, we have also to consider its nature. We see that the Constitutions of United States of America and Britain have been copied in this Constitution. Some articles have been borrowed from the Constitutions of Ireland, Australia and Canada. A paper has rightly remarked that this is a slavish imitation of the Constitutions of these countries. Sir, the conditions that prevailed in America, Britain, Canada or Australia do not obtain in our country. The conditions prevalent in our country can be compared only with those of Russia—Russia of pre-Soviet Republic days. Besides, we have seven lakh villages in our country and the village is its smallest unit. Thanks to Mahatma Gandhi, our struggle of freedom reached the villages and it was because of the villages and because of their might that India became free.

I want to ask whether there is any mention of villages and any place for them in the structure of this great Constitution. No, nowhere. The constitution of a free country should be based on 'local self government'. We see nothing of local self-government anywhere in this Constitution. This Constitution as a whole, instead of being evolved from our life and reared from the bottom upwards is being imported from outside and built from above downwords. A constitution which is not based on units and in the making of which they have no voice, in which there is not even a mention of thousands and lakhs of villages of India and in framing which they have had no hand,—well you can give such a constitution to the country but I very much doubt whether you would be able to keep it for long.

Sir, our Indian Republic should have been a Union—a Union of small autonomous republics. All those autonomous republics by joining together would have formed the bigger Republic of India. Had there been such antonomous republics, neither the question of linguistic provinces nor of communal majorities or minorities or of backward classes would have arisen. The autonomous Units of the Union could have joined the unions of their choice according to their culture. The Union that would have been formed in our country in this way, would not have required so much emphasis on centralisation as our learned Doctor Ambedkar has laid. Centralisation is a good thing and is useful at times but we forget that all through his life Mahatma Gandhi emphasised the fact that too much centralisation of power makes that power totalitarian and takes it towards fascist ideals. The only method of safeguarding against totalitarianism and fascism is that power should be

decentralised to the greatest extent. We would have thus brought about such a centralisation of power through welding of heart as could not be matched anywhere in the world. But the natural consequence of centralising power by law will be that our country which has all along opposed Fascism—even today we claim to strongly oppose it—will gradually move towards Fascism. Therefore, Sir, I want that this House should seriously consider these matters. This is not an ordinary matter. We should not treat this constitution-making as a light and playful business. On the contrary it is a step pregnant with historic consequences. After hundreds, nay, thousands of years I would say, and it would be no exaggeration to say so, that in the history of India it is for the first time that we have this opportunity of framing the Constitution of the whole of India. Therefore no amount of thought we can give to this Constitution can be too much. We may be told and we have been told that let this Constitution be adopted, for the assembly, elected on adult franchise provided therein, would be quite competent to effect the necessary amendments in it.

But Sir, when the Constitution is once framed, there will be legal difficulties in amending it. Moreover it would be no matter of pride for us that a task of such importance in the history of India, which we are expected to complete, should have been left half-finished by us to be completed by others. The coming generations will only deplore such a course of action on our part. Therefore if we take into consideration the unrepresentative character of the Draft Constitution that is before us and its nature and structure, we come to the conclusion that it is not in harmony with our present conditions, our culture and our customs. Therefore it is necessary that we should postpone its consideration for the time being and should form a new Constituent Assembly on the basis of adult franchise so that it may go through this constitution, consider it and amend it where necessary. Till the formation of this new Constituent Assembly the present Constituent Assembly can function as the Parliament of India. We do not want that there should be any delay in this. No doubt we have taken two years to do this work and we might take an year or so more but one or two years are nothing in the life of a nation. So long as this Constitution is not finalised we can continue to function as we have been doing so far. As I have said we are going to frame the Constitution of United India; it should be a new and ideal Constitution.

Today after India has attained freedom it is not necessary for me to tell you that the world is looking up to India. It expects something new from India. At such a time as the present one it was necessary that we should have placed before the world a Draft Constitution, a Constitution, which could have been taken as an ideal. Instead we have copied the constitutions of other countries and incorporated some of their parts and in this way prepared a Constitution. As I have said, from the structure of the Constitution it appears that it stands on its head and not on its legs. Thousands and lakhs of villages of India neither had any hand nor any voice in its framing. I have no hesitation in saying that if lakhs of villages of India had been given their share on the basis of adult franchise in drafting this Constitution its shape would have been altogether different. What a havoc is poverty causing in our country! What hunger and nakedness are they not suffering from! Was it not then necessary that the right to work and right to employment were included in the Fundamental Rights declared by this Constitution and the people of this land were freed from the worry about their daily food and clothing? Every man shall have a right to receive education; all these things should have been included in the Fundamental Rights. But, Sir, I need not say anything else except point out that even Honourable Dr. Ambedkar has had to realize and has also admitted in his speech that many objections have been raised in regard to the Fundamental Rights. Notwithstanding the reasoning of the learned Doctor, I find it difficult to accept that the Fundamental Rights and other rights

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are one and the same thing. I understand that Fundamental Rights are those rights which cannot be abrogated by anybody—nay, not even by the government. One can be deprived of these rights only as a punishment for an offence, awarded by a Court of Law. But if the Fundamental Rights were to be at the mercy of the government, they cease to be Fundamental Rights. Sir, what I mean by all this is that if the thousands of villages of the country, the poor classes and the labourers of India had any hand in framing this Constitution, it would have been quite different from what it is today.

With your permission, therefore, Sir, I would appeal to the House that, treating this Constitution not as ordinary but as a historical document, they should give proper consideration to it. And I would appeal to you, Sir, that consideration of the Draft Constitution be postponed for the present and the country be given an opportunity to express itself so that the Constitution that may be framed may really be a democratic Constitution. With these words I close my speech on the amendment.]

Mr. President: *[The motion is before you; those who desire to speak may do so.]

Pandit Balkrishna Sharma (United Provinces: General): *[Mr. President, my friend Seth Damodar Swarup has submitted a motion before the House today that we should postpone the consideration of the Draft Constitution placed before us. In support of his motion he has advanced some arguments. Before taking up an analysis of those arguments I would like to draw the attention of the Assembly to one or two important matters. The first thing that strikes me is that the motion moved by my friend is absolutely undesirable. After all, for what purpose have we assembled here? We have assembled here having been elected to frame the Constitution. The political party, to which the Honourable Member belongs, once decided that this Constituent Assembly is not an independent sovereign body, and so it should be boycotted. Again that party, under what considerations I know not, decided that they should seek election to it. They were elected to this Assembly but some of their partymen did not attend the Assembly in the beginning. But later, again under a consideration, of which I am not aware, they decided to participate in this Assembly. Now you can imagine what opinion can be formed of a group, party or an individual whose policy changes every moment, which is satisfied at one moment and discontented the next. I think the idea that we should not frame the Constitution in this House struck the mind of my friend Seth Damodar Swarup rather too late. In my humble opinion, the arguments advanced by him are weak, groundless, uninteresting and senseless to such a degree as cannot be defined. His first argument is that the Constituent Assembly does not have a representative character. I would like to submit that there is ridiculous aspect of democracy, and that comes to the surface when to make democracy fully representative in character, we evolve such institutions as proportional representation and thereby establish fascism amongst ourselves. In Germany, Italy and France, wherever attempts were made to establish this type of Democracy, the only result was that it was soon transformed into fascism. The argument, that we are the representatives of 15 per cent of the population and that the representatives of 85 per cent of the population are not with us and therefore we should postpone on that ground the consideration of the Constitution, is a fallacious one—fallacious because nowhere in the world can a model assembly be constituted. We have represented the whole of the country in this Assembly. Sethji had been a member of the Congress till recently; on the basis of the formation of such associations, could he say that the Congress was a body representing the whole of India? While

* [ ] Translation of Hindustani speech.

he could not say that on numerical basis, my friend Sethji has always considered himself to be a divine lieutenant in India. Even though not even one poor man, not even a farmer, and a worker has elected him to represent India, yet he considers himself to be a representative. And why does he do so? As the saying goes in the Russian language "we are the will of the peoples". We are the representatives of the will, emotions and ambitions of the people, and in this capacity representing the whole of India we are framing our Constitution, though our representation is not based on numbers. Hence, I think that it is not proper to raise this fallacious argument about percentages.

The second point which he has raised is that we have borrowed in our Constitution many articles from the constitutions of other countries. I think that Honourable Dr. Ambedkar has very nicely answered this question in his yesterday's speech. I would only like to say that if my friend Seth Damodar Swarup runs so much after originality which I believe he intends to do, I am afraid he would make himself extremely ridiculous. It will be because when he talks of originality he himself is not really original. His eyes are fixed on Russia and he comments that Russian Constitution has not been followed in framing this Constitution. This means that had we followed Russia we would have been original, but because we have followed Australia, Canada, U.S.A. and U.K. or borrowed many articles from them or received an inspiration from them, we are not original. Now it is for us to choose which one to follow. Sethji and Maulana Hasrat Mohani incline towards Russia. We favour friendship with Russia. With great interest and sympathy we witness the great experiment Russia is making to organise men; but it is definite that we cannot accept even in dream its policy to subordinate or annihilate the individual for the sake of the state in all important stages of life. Sethji has quoted Mahatma Gandhi, who was against over-centralisation. My friend should remember that Mahatma Gandhi was essentially an anarchist. He was a philosophical anarchist. His view was that in the ultimate analysis anarchism was beneficial, for his aim was to raise man to a pedestal were he does not need external restraint. You and we are not such great souls. It would be ridiculous for us to attempt to talk of anarchism by simply repeating the words of Gandhiji and trying to put it into actual practice. Hence, it is useless to repeat the words of Mahatma Gandhi here. By quoting Mahatma Gandhi in support of his arguments Sethji has not revealed any special power of reasoning. He wants to know what position is held by villages, labourers, farmers, and local self-governments in this Constitution. I would like to submit humbly that if he will take the trouble of studying the whole of the Constitution carefully, he would come to know that even today in the making of this Constitution we are not ignoring that sacred inspiration of Mahatma Gandhi which led him to give us a message that India does not consist of cities but of the seven lakhs of villages. Mr. President, I, therefore, oppose the motion of Sethji and I am sure that the House will not at all hesitate in rejecting it outright.]

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, Seth Damodar Swarup's amendment should not be dismissed so lightly as my Honourable friend Shri Balkrishna Sharma has done. We ourselves, when the Cabinet Mission were in India, wanted that this Assembly should be elected on adult suffrage; but the Britishers never wanted election on adult suffrage. They forced on us this method of election. If they had acceded to our demand, we would have been elected on adult suffrage. Seth Damodar Swarup knows full well that the Congress party which is in the majority in this House, would have welcomed it. The issue which he has raised is a fundamental one and we must all admit that an Assembly elected on adult suffrage would be the real Constituent Assembly, though I am sure a large majority of these same members would be again returned.

[Prof. Shibban Lal Saksena]

But, today, the question is a practical one: can we adjourn now and wait for a year or so to have a new election for the Constituent Assembly and then frame our constitution? I think the present Constitution which has been framed by a foreign Parliament is not one under which I would like to remain a minute longer than I can help. I therefore think that today we must go on with the consideration of this Draft Constitution but when we come to the chapter for changing the Constitution we must make changes in the Constitution in the first ten years much easier than it is at present in the Draft. I think we must make it possible for any change in the Constitution to be made by simple majority and not by two-thirds majority.

Sethji has also raised other issues. He has said that this Constitution does not give any voice to the villages. He is thinking of the Soviet Constitution. Mahatma Gandhi's own Constitution, of which an outline was given by Shri S. N. Aggarwal, was also based on village republics or village panchayats, and I think we shall have to discuss this point carefully when we come to that aspect of the Constitution. I was pained to hear from Dr. Ambedkar that he rather despised the system in which villages had a paramount voice. I think we will have to amend that portion properly. This Assembly is now entering upon its task and is fully entitled to change the entire Constitution. Sethji has today given his amendments and we shall be very glad to discuss them. I do not think that Sethji is alone in the views he expressed. We must not dismiss these things with the lightness with which my predecessor has dismissed them. In this Assembly we must discuss every aspect of this Constitution with seriousness and everybody must be treated with respect. Other things which he has said, can also be discussed at the proper time. He has said that there is no provision in this Constitution for Local Self Government in units. It is an important thing which must be included in the Constitution and at present there is this omission in the present Constitution. But I don't think that Sethji's advice that we should adjourn now and wait for a year for the Constitution to be made by a new Constituent Assembly is proper, because the new Assembly will have to be elected afresh and this House will have to make some rules for electing a new Constituent Assembly and that will take some time. Then we will have to sit now to make some rules for election of the new Constituent Assembly and then to have the new Constitution discussed by it. I think the new Houses of Parliament in this Draft Constitution elected under adult suffrage will have full power to change the Constitution, and if that clause which makes it difficult to change the Constitution is removed, the purpose of this amendment will have been served. I therefore suggest that when that portion comes, we will discuss that, but at present the adjournment will not be proper. I therefore oppose this amendment.

Shri S. Nagappa (Madras: General): Mr. President, Sir, I am sorry that I have to oppose my Honourable friend's motion that is before the House. My friend has been saying that he has not been returned to this Assembly in order to make a Constitution. I am at a loss to understand what is the purpose for which he contested these elections. I think it was clear to him when he got into this Assembly that he was coming here only in order to frame a Constitution. But his point is that this is not a representative body. May I ask him which sort of body will be really representative? Are these members not elected by the elected representatives of the people? No doubt I agree that there was no adult suffrage. Whose fault is it? Is it the fault of the present Government or is it the fault of the previous Government? My friend would have been in order if he had asked the previous Government and he was also aware that the previous Government had not enough time. They were eager to go and so, even if they wanted to prepare the electoral rolls on adult suffrage and conduct elections, they would have taken two years. I don't know whether my friend wanted to have the foreign domination for two more years. We

have been elected by the representatives of the people and every member represents some thousands of people. No doubt he does not represent every one of the people that are in that province but he represents the educated that are the cream of the people. When they have sent these members here with the definite task that they should frame the Constitution and moreover when this was the body that has received the power from the foreigner, it is more in order and more representative than any other. Even if elections are held on an adult suffrage, can my friend guarantee that there will be other than these members? I doubt it. These are the chosen leaders not from to-day or yesterday but for so many years and the people have confidence in them. Even when the country was going through turmoil and difficulties the people had reposed confidence in them.

My friend was saying that there are no poor people's representatives. What are we? I represent the poorest of the poor. He was talking of the depressed classes and backward communities. Are we not depressed class people? What about Dr. Ambedkar? Whom does he represent? He represents the lowest rung of the ladder and can there be any other representative other than Dr. Ambedkar from those people? It is our fortune that the task of framing the Constitution has been entrusted to the representative—the real representative—of the lowest rung of the ladder and I can't understand when my friend says the poor have not been given a chance to be represented here, and the worker has not been given a chance to be represented here. If that was the case, may I ask why there was no agitation in the country when this Assembly was elected? There were so many organisations and there were so many papers who could have complained and agitated; and almost all people were eager that this body must come into existence as early as possible and relieve the Britisher who was anxious to leave this country. When that was the case I am surprised at my friend's observations. If my friend does not consider this as a representative body, he should have refrained from coming into this Assembly. He did not do that. He was wise enough to get into this and continue for two years and be called a Member of this Assembly. Having done all that, now when the Constitution is ready and ripe for adoption, he calmly comes and says that this is not a representative body. I see no logic or reason in that. Can he prove that except a section of the country which is dissatisfied and a section which could not get into the House or a section which is jealous of the present Government, there is any large body of people in the country who are not satisfied with the representative character of this House?

My friend the Maulana talked in the same strain. I do not know whether he took his inspiration from Shri Damodar Swarup or whether the latter took his inspiration from the Maulana, or whether they conspired among themselves. Anyhow their view seems peculiar not only to me but to large numbers of people. I do not know what the Maulana was trying to impress on the House, but he seems to be more fond of the Soviet Constitution than of his own Constitution. Forgetting that he can frame a better constitution than the Soviet or any other constitution, he told us that he was for adopting the Soviet Constitution. I do not know the reason why he has been tempted to adopt that constitution. If his argument is that as we have borrowed from every constitution we should borrow from the Soviet Constitution also, I can see some reason in it. Here he says that as we have borrowed from America and England and New Zealand we should borrow also from Soviet Russia: But why should he be so fond of that? We borrow from other countries what is fit to be adopted by us, when they suit our conditions and requirements. It is not for the sake of borrowing that we do this and our Constitution is not a combination or mixture of all other constitutions. We study other constitutions and consider our own

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customs and usages and culture, and we borrow what suits us best. There is nothing wrong in borrowing something which suits us best.

Sir, I oppose the motion.

Shri Syamanandan Sahaya (Bihar: General): Sir, I propose a closure of the debate on the amendments and move that the question be now put. My Honourable friend Seth Damodar Swarup has done his duty by voicing the opinion of a certain political section of the country and we need not take any more time over this. We may now proceed to discuss the Draft Constitution generally.

Mr. President: The question is:

That the question be now put.

The motion was adopted.

Mr. President: The question is:

That Maulana Hasrat Mohani's motion be adopted.

The motion was negatived.

Mr. President: The question is—

That Seth Damodar Swarup's motion be adopted.

The motion was negatived.

Mr. President: The House will now proceed to a general discussion of the motion by Dr. Ambedkar. Shri H. V. Kamath has an amendment on it.

Shri H. V. Kamath: Sir, I move:

"That in the motion the word 'Constituent' be deleted and for the words 'settled by the Drafting Committee' the words 'prepared by the Drafting Committee' be substituted".

It is a purely verbal amendment and there is no need to enter into a discussion or controversy over it. The word "Constituent" is redundant as "Assembly" means the Constituent Assembly. As regards the other part, the copy of the Draft Constitution that we have got says, "prepared by the Drafting Committee". I wish to bring Dr. Ambedkar's motion into line with this even at the risk of being dubbed a stickler or purist. Sir, I move.

Mr. President: I will draw attention to Rule 38-A which uses the words "Draft Constitution of India settled by the Drafting Committee". Dr. Ambedkar's motion takes the word from that rule.

Shri H. V. Kamath: By leave of the President, I shall now speak on the motion itself. While I support the motion I do not accept all the observations that Dr. Ambedkar made in the course of his learned address yesterday. As regards those aspects of the question which deal with the strength of the State, which deal with the provision to convert a Federal State into a unitary one in the event of emergency, as regards the undersirability of the various component units of the State to maintain armies to the prejudice of the security of the Union as a whole, I endorse his observations whole-heartedly. He told us with some pride—I think—that the Constitution is borrowed largely from the Government of India Act and considerably from the constitutions of the United Kingdom, United States and Australia and perhaps Canada also. I listened to his speech with considerable pleasure and not a little profit. But I expected him to tell us what, if any, had been borrowed from our political past, from the political and spiritual genius of the Indian people. Of that there was not a single word throughout the whole speech. This is perhaps in tune with the times. The other day Shrimati Vijayalakshmi while addressing the United Nations General Assembly in Paris observed with pride that we in India have borrowed from France their slogan of liberty, equality and fraternity; we have taken this from England and that from America, but she did not

say what we have borrowed from our own past, from our own political and historic past, from our long and chequered history of which we are so proud.

On one thing I join issue with Dr. Ambedkar. He was pleased to refer to the villages—I am quoting from a press report in the absence of the official copy—as "sinks of localism and dens of ignorance, narrow-mindedness and communalism"; and he also laid at the door of a certain Metcalfe our "pathetic faith" in village communities. Sir, I may say that it is not owing to Metcalfe but owing to a far greater man who has liberated us in recent times, our Master and the Father of our nation, that this love of ours for the villages has grown, our faith in the village republics and our rural communities has grown and we have cherished it with all our heart. It is due to Mahatma Gandhi, it is due to you, Sir, and it is due to Sardar Patel and Pandit Nehru and Netaji Bose that we have come to love our village folk. With all deference to Dr. Ambedkar, I differ from him in this regard. His attitude yesterday was typical of the urban highbrow; and if that is going to be our attitude towards the village folk, I can only say, "God save us." If we do not cultivate sympathy and love and affection for our villages and rural folk I do not see how we can uplift our country. Mahatma Gandhi taught us in almost the last mantra that he gave in the last days of his life to strive for panchayat raj. If Dr. Ambedkar cannot see his way to accept this, I do not see what remedy or panacea he has got for uplifting our villages. In my own province of C.P. and Berar we have recently launched upon a scheme of Janapadas, of local self-government and decentralisation; and that is entirely in consonance with the teachings of our Master. I hope that scheme will come to fruition and be an example to the rest of the country. Sir, it was with considerable pain that I heard Dr. Ambedkar refer to our villages in that fashion, with dislike, if not with contempt. Perhaps the fault lies with the composition of the Drafting Committee, among the members of which no one, with the sole exception of Sriyut Munshi, has taken any active part in the struggle for our country's freedom. None of them is therefore capable of entering into the spirit of our struggle, the spirit that animated us; they cannot comprehend with their hearts—I am not talking of the head it is comparatively easy to understand with the head—the turmoiled birth of our nation after years of travail and tribulation. That is why the tone of Dr. Ambedkar's speech yesterday with regard to our poorest, the lowliest and the lost was what it was. I am sorry he relied on Metcalfe only. Other historians and research scholars have also given us precious information in this regard. I do not know if he has read a book called "Indian Polity" by Dr. Jayaswal; I do not know if he has read another book by a greater man, "The Spirit and Form of Indian Polity" by Sree Aurobindo. From these books we learn how our polity in ancient times was securely built on village communities which were autonomous and self-contained; and that is why our civilisation has survived through all these ages. If we lose sight of the strength of our polity we lose sight of everything. I will read to the House a brief description of what our polity was and what its strength was:

"At the height of its evolution and in the great days of Indian civilisation we find an admirable political system, efficient in the highest degree and very perfectly combining village and urban self-government with stability and order. The State carried on its work administrative, judicial, financial and protective—without destroying or encroaching on the rights and free activities of the people and its constituent bodies in the same department. The royal courts in capital and country were the supreme judicial authority co-ordinating the administration of justice throughout the kingdom."

That is so far as these village republics are concerned. I believe the day is not far distant when not merely India but the whole world, if it wants peace and

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security and prosperity and happiness, will have to decentralise and establish village republics and town republics, and on the basis of this they will have to build their State; otherwise the world is in for hard times.

Then, Sir, I find in Dr. Ambedkar's speech considerable amount of thunder and plenty of lightning. But I could not find the light that sustains, the light that warms, the light that gives life, the light eternal. I heard what he said about minorities in India. I do not know on what basis he made this remark that no minority in India had taken this stand. After referring to the Redmond-Carson episode in the history of the Irish struggle, he went on to say that no minority in India has taken this stand. "Damn your safeguards" said Carson, "we don't want to be ruled by you."

Dr. Ambedkar said: "They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority."

If, Sir, our minorities had really taken this stand, India's history would have been different. After what has happened during the last two years, can we say that no minority took this stand? It is because a certain minority took this stand and said, "We do not want to be ruled by the majority. Go to hell.", we had the tragedy of the last eighteen months. If Dr. Ambedkar was referring to India after 15th August 1947, I have nothing to say; but if he was referring to India before 15th August 1947, I fail to understand him. How can he say that no minority stood for safeguards and said, 'We do not want to be ruled by you'? It is because a certain organisaiton took the stand, "No safeguards. We do not want safeguards. We want a separate State.", that ultimately Pakistan came into being and we had to witness the tragedy of the past eighteen months.

In 1927, I as a student attended the Madras session of the Congress. Maulana Mahomed Ali and Pandit Malaviya were both present there. There was a question about safeguards and Pandit Malaviya made a moving speech that went straight to the heart. He said: "What safeguards did you ask from the Secretary of State for India or from the Government of India? We are here. What better safeguards you want?" After that speech, Maulana Mahomed Ali came to the rostrum, embraced Pandit Malaviya and said: "I do not want any safeguards. We want to live as Indians, as part of the Indian body-politic. We want no safeguards from the British Government. Pandit Malaviya is our best safeguard." If that spirit had continued to animate us, we would have remained as united India, a single country, a single State and a single nation. This being so, I fail to understand what Dr. Ambedkar means by saying that no minority in India has taken this stand. The majority has always been willing to grant them safeguards, adequate safeguards. But the minority would have nothing to do with it. The minority in India took the same stand as Carson took in Ireland. That is why, to the detriment of the Irish body-politic division was resorted to, as was done in India, resulting in disturbance of the peace and progress of the country.

Well, Sir, there are one or two other aspects of the Constitution I would like to touch upon. One relates to Article 280 of the Constitution, viz., the one about Fundamental Rights.

Mr. President: The Honourable Member has almost exhausted his time.

Shri H. V. Kamath: I only want one or two more minutes, Sir. The Fundamental Rights could be suspended in the event of an emergency and that means that the power of the High Court can be taken away. It is a dangerous provision to make in the Constitution. If I remember aright, even during the last world war, the British Government did not suspend the right of the citizen to

move the appropriate courts to issue writs of *haebeas corpus* and so on. I do not know whether we should go one better, rather one worse, than the British Government.

Then we have the Ordinance-making power given in Article 102. This should be done away with. When we were fighting the British Government, we attacked this power, this ordinance-making power of the Governor-General and the Viceroy. Here we are making this provision, not for an emergency. Article 102 merely says that the President may promulgate Ordinances whenever he is so satisfied. That power should be drastically curtailed, if not entirely done away with.

Now I will conclude by saying that, with all its good points, with all its provisions for making India a united and strong federal-unitary State, there are certain matters which could have been more happily provided for.

Now, what is a State for? The utility of a State has to be judged from its effect on the common man's welfare. The ultimate conflict that has to be resolved is this: whether the individual is for the State or the State for the individual. Mahatma Gandhi tried in his lifetime to strike a happy balance, to reconcile this dwandwa. द्वंद्व) and arrived at the conception of the Panchayat Raj. I hope that we in India will go forward and try to make the State exist for the individual rather than the individual for the State. This is what we must aim at and that is what we must bring about in our own country. Because we have a great spiritual and political heritage, we in India are best fitted to bring about this consummation in our own country; and let me say that unless in the whole world the spirit of empire gives place to the empire of the spirit, in the way that Mahatma Gandhi and all seers before him have conceived it, unless this consummation comes about in the world, there will be no peace on earth. At least let us try to bring about this empire of the spirit in our own political institutions. If we do not do this, our attempt today in this Assembly would not truly reflect the political genius of the Indian people. We have been so much taken in by Western glamour. This glamour has been too much with us. We have become the prisoners of our habit forms and thought forms. They have become almost like the old man in Sindbad the Sailor whom he could not shake off. We have become unable to shake off our old habits. But amid all the mist of confusion, there is still the certainty of a new twilight; not the twilight of the evening, but the twilight of the morning—the *Yuga Sandhi* India of the ages is not dead nor has she spoken her last creative word; she lives and has still something to do for herself and for the human family. And that which is now awake in India is not, I hope, an Anglicized or Europeanized Oriental people, docile pupil of the West and doomed to repeat the cycle of the Occident's success and failure, but still the ancient invincible Shakti recovering Her deepest Self, lifting Her head higher towards the supreme source of light and strength, and turning to discover the complete meaning and a vaster form of Her Dharma. In that faith and fortified by that conviction, let us march forward into the future, and by the grace of God, victory will crown our efforts.

Seth Govind Das (C.P. and Berar: General): *[Mr. President, I rise to support the motion moved by Dr. Ambedkar. But at the very outset I would like to make it clear that my support to his motion does not mean that I agree to every thing he has said in his speech. On the contrary, in my opinion his speech has not at all been befitting the beautiful motion moved by him. He has raised many controversial issues and it would have been better if he had not raised them at all. While supporting the motion, I would like to make it clear to you that I do not have at present the enthusiasm with which such a motion should be supported. The motion as also the whole Constitution have been presented to the House in an alien language. There has been yesterday considerable discussion on this question and I would not say much on it. But

* [Translation of Hindustani Speech.]

[Seth Govind Das]

I do feel a regret today that we did not decide the question of national language earlier. Sir, had we taken a decision in this respect earlier, yesterday, there would have been no necessity for you to give an assurance that this Constitution would be placed before this House in the language which would be accepted as the national language and that the articles which would have been passed by the time a decision is taken in this respect would be repassed in our own language. Perhaps you remember, that you had given us an assurance in this respect and that when after your assurance I had raised the question again you had stated in your reply that the original draft of the Constitution would be in the national language. To adopt the Constitution in an alien language is not only a matter of shame for us but it will create many difficulties in the future and will establish supremacy of English in our country. Even during British regime our country produced many learned men who did not know English.

For example, mention of late Pandit Sudhakar Dwivedi may be made. Such a person nowadays is Moulana Abul Kalam Azad who cannot be said to be a scholar of the English language. If we frame our Constitution in a foreign language, even free India, inspite of having its own national language, will have to depend for ever on those who have specialised in English in so far as the constitutional matters would be concerned. Therefore again, I would appeal to you, as I did yesterday, that the original of our Constitution should be in Hindi.

Moreover, this Constitution is incomplete. Many important matters have not been included in it. No doubt article 99, chapter II lays down "In Parliament Business shall be conducted in Hindi or English", but in the whole of the Draft there is no mention about our national language. Of course, we can amend article 99, and specifically mention the language for transaction of business in our Assemblies. But that alone would not do unless we also specifically declare which language shall be our national language. The mere statement that in Parliament business shall be conducted in this or that language is not enough. We have to declare that a particular language shall be the national language of the country. We have also to declare which shall be the national script of the country. In so far as both these matters are concerned the Constitution is quite incomplete.

Perhaps you might have noticed the fact that in the Irish Constitution there is mention of their National Flag. Though we accepted by a resolution this tricolour flag as our National Flag, we have made no mention of the National Flag in this draft.

We would like that our Constitution should specifically provide that a particular flag shall be our National Flag just as has been done in the Irish Constitution.

Besides, our Constitution is silent about our National Anthem. On many occasions our Prime Minister Pandit Jawaharlal Nehru has stated that the final decision on the question of National Anthem would be taken by the Constituent Assembly. But I would also like that a provision should be included in our Constitution which specifically fixes our National Anthem.

I would also like to express my views on all these matters that have not been provided for by this draft of the Constitution. In my opinion Hindi alone can be the national language of this country. I think there are only a few members of this House who believe today that English can be made the national language of this country. The Hindi—Hindustani controversy has also come to an end, simply because Article 99 of the Constitution refers to "Hindi or English" alone in relation to the transaction of business in our Parliament. Thus the question of Hindustani also exists no more. As far as the members and residents of South India are concerned, I would agree that business here may be conducted in English also for some years to come. We should not impose anything on them. But Hindi must be our national language and Devnagari our national script.

This Constitution should by a specific provision prescribe the flag that has been accepted before in this House as our National Flag and I suggest that like the Union Jack it should be given a distinctive name of its own. I would like to suggest to you a beautiful name for it. It may be named "Sudarshan". The word "Sudarshan" means beautiful in appearance. While presenting the flag to the House Pandit Jawaharlal Nehru had described in his speech how beautiful our national flag is. I suggest, therefore, that it be named "Sudarshan". There is also a Chakra or wheel on it. The weapon of Lord Vishnu was also known Sudarshan Chakra and hence this name would be quite suitable.

As far as the question of National Anthem is concerned, I would say that 'Vande Mataram' can be our National Anthem. The history of our struggle for independence is associated with Vande Mataram. If it be said that its tune is not fit for orchestrisation I would submit that this is a difficulty which can be overcome by experts in orchestral music. Lyrical songs of Mahakavi Soordas and Meerabai can be sung not only in one but in many tunes. It is therefore wrong to think that 'Vande Mataram' is not suited for orchestrisation. There is no person who has no respect in his heart for Rabindranath Tagore—the King among poets. The verse "Jana Mana Gana" was composed on the occasion of the visit of the late Emperor George the V to India in 1911. The poem offers greetings, not to Mother India, but to the late King Emperor. Every sentiment in it is in relation to the "Bharat Bhagia Vidhata" and who is meant is clear from the expression "victory to the Emperor" (Jai Rajeshwar). It is evident that in a Republic we cannot in our National Anthem offer any greetings to any 'Rajeshwar'. 'Vande Mataram' alone, therefore can be our National Anthem.

Besides its incompleteness, this Constitution also needs many amendments.

For instance, our country has been named as 'India' in this Constitution. As far as the foreign countries are concerned this name is alright. But if a meeting is held in our country which we have to address, shall we address the gathering 'Ay Indians'? When we want to frame the Constitution of our country in our national language, when we want to make it a secular state, neither 'India' nor Hindustan are suitable names for this country. In my opinion, we should give this country the ancient name 'Bharat'.

One thing more I would like to mention here. Ours is an agricultural country. It should have all that is necessary for agriculture. From this point of view the protection of cows is very essential for us. The problem of cow protection is a matter which has been associated with our civilisation from the time of Lord Krishna. To us it is not only a religious or economic but also a cultural problem. Just as we have declared the practice of untouchability an offence, we can also declare that cow-slaughter in this country would be an offence. We should include some provision in our Constitution for this. We learn from our history that only such regimes, whether during Hindu period or Muslim period, as had prohibited cow-slaughter had been popular and successful in our country. History is a witness to the fact that cow-slaughter was abolished here during the rule of many Muslim Kings. It may be said that it would entail a heavy financial burden. I submit, however, that even if we impose a tax on the people and ask them to pay it in order to protect the cows, I am of opinion that they would pay it quite willingly. The bogey of financial difficulties used to be raised before us by the British Government. But I would like that in the matter of cow-protection this bogey should not be raised before us.

We have to examine the Constitution from every point of view and seek to make it complete in all respects. Ours is not a newly born country. It is an ancient country, it has a long history, a hoary civilisation and culture. We should frame our Constitution keeping in view all these facts before us. We do not want to place any minority, whether Muslim or other, under any disabilities. But, certainly we are not prepared to appease those who put the

[Seth Govind Das]
two-nation theory before us. I want to make it clear that from the cultural point of view only one culture can exist in this country. The Constitution that we adopt must be in harmony with our culture and that Constitution would be suitable to us which is in our language.

It is after centuries that we have this opportunity of framing our constitution. We must use it well and frame a constitution that is suited to the genius of our land.]

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I have a short time at my disposal to deal with this enormous subject and I shall therefore confine myself to one or two specific subjects and reserve my comments on other matters for a latter stage. The first thing to which I wish to draw the attention of the House is the treatment of the expression "States". "States" under the Draft Constitution means almost anything. The idea was to do away with the distinction between the Provinces, the Indian States, the Chief Commissioners' Provinces and similar other things. It was feared, and very naturally feared, at one stage that the Indian States would not align themselves or could not be made to align themselves to the new set up of things, but things have proceeded rapidly and the "States" have quite reasonably aligned themselves or are aligning themselves with the Provinces. I therefore think that this definition of "States" as meaning all sorts of things is no longer necessary. I should think we should revert to the nomenclature of Provinces, Indian States and Chief Commissioners' Provinces and the like. There is no fear of jumbling them together and it is better to treat them as distinct entities. It may have been thought by the eminent draftsmen that unless they did this, there would be some centrifugal forces working, making them drift apart. But, that fear having been allayed, it is now necessary to go back to the original state of affairs. I submit that we are not legislating for the future; we are legislating for the present; though we should have an eye for the future, we must not forget that we are legislating for the present time. In the Draft Constitution we have three distinct items, namely, Provinces, Indian States and Chief Commissioners' Provinces. We should not do away with the present distinctions. If at a future date, these distinct entities would combine into one, as I have no doubt they will, and would be governed by the same or similar characteristics, then will be the time to amend the Constitution and treat them on the same basis.

You would be pleased to find that in Parts VI and XII, "State" means the Provinces. In Part VII, "State" means Chief Commissioners' Provinces. In Part IV "State" means Indian States. In Part III, "State" means a wonderful series of things. By means of article 7, "State" means first of all, the Government of India, secondly it means the Government of the States, meaning all the States, Provinces, Indian States and Chief Commissioners' Provinces, and what is very remarkable, it also means local and other authorities. I suppose these are the municipalities, district boards and other autonomous authorities. I think the passion for a constitutional expression has gone too far. To call a district board, a municipality or a thing of that type as a "State" would be doing violence to language. If English is to remain the language in which the Constitution has to be embodied, I think we should have some respect for the accepted meaning of the word State. A State always means and implies a kind of sovereignty. It may be limited or it may be unlimited. Some kind of sovereignty is implied in the word State. But to call a district board or a municipality a State would be a misnomer. I think the passion for the use of the word 'State' should be checked. If it is a question of nomenclature, if we want to use the same expression for the Government of India and the States, we should distinctly mention the word municipality or district board and not allow these to be comprehended within the meaning of the all-pervading word

'State'. If we allow the word 'State' to be used for all sorts of purposes, the very purpose of this well-known constitutional expression would be lost. I should think therefore that Honourable Members should look into this while drafting amendments. I find it to be an anomaly and it is difficult to find a substitute for this expression. I ask the co-operation of the Honourable Members of this House to find a suitable expression for this. The expression has been defined to mean different things in different clauses. These are articles 1, 7, 28, 128, 212 and 247, according to which the word 'State' means different things. There is a danger of using a well-known expression to mean different things in different parts of the same statute. This may lead to confusion. It will be difficult for everyone who will have to deal with the interpretation of this Constitution or to understand this Constitution, to keep his head quite clear as to what is the sense in which the word 'State' has been used at a particular place. I submit, Sir, the ultimate purpose which seems to be lying behind this draftsmanship is the ultimate co-ordination and uniformity of all these different institutions. But, at present, there is no need for this kind of indiscriminate use of the word 'State'. I should therefore ask Honourable members to consider in giving notice of amendments, whether it would be better to stick to the old and well known expressions Provinces, Indian States and Chief Commissioners' Provinces.

Then, I have one or two things to say with regard to another subject. Coming to the directive principles of State policy, articles 28 to 40, I think that these are pious expressions. They have no binding force. These cannot be enforced in a Court of Law and really, as the Honourable the Law Minister himself candidly admitted, they are pious superfluities. That is the criticism. He has given only one reply that the draft Constitution admits it to be so. I submit it is not a reply, but rather it is a statement of the fact of the criticism. I think every constitutional principle should give a right, and every right should be justiciable in a Court of law and in other places. If there is a right, its violation is a wrong, giving rise, to the well known cause of action. So, there can be no right, the violation of which would not lead to a cause of action. I do not think that people would rush to Court for these things. But, if a constitutional right is defined with a considerable amount of ceremony in a considerably important document like the Constitution of India, and if for the violation of the same no legal remedy is provided, it would be absolutely wrong to insert the so-called rights in the statute. I submit, Sir, these principles are so well known that they do not require to be stated formally in a Constitution, at the same time taking care to see that they are not justiciable in a Court of law. I submit, if these principles of a purely directive character without a binding force be at all introduced in a Statute. I think there are other principles which should also be equally introduced, as for instance, 'don't tell a lie', 'don't ill-treat your neighbour', and so on and so forth. The Ten Commandments of the Bible and the other commandments from various religions and from practical life should also be introduced on the same principle. As we do not think it practicable to state all these obvious truths, not that these truths are not admissible or are not binding, but because they are obvious. I submit that these directive principles are too obvious to require any mention. If there is any principle which requires to be mentioned, it must be justiciable; it must be enforceable in a Court of law. Otherwise, it should have no place in a Constitution. The Honourable Law Minister himself admitted that there is no principle similar to this to be found in any Constitution, except in the Irish Constitution. If a principle of this broad nature hes found place only in one Constitution and that Constitution not being the best, I think it is not a safe guide to be folowed. I submit that these directive principles should also receive careful attention from the Honourable members; at the time when this thing will conme up, these principles should require careful attention.

[Mr. Naziruddin Ahmad]

As the time is very short, I do not wish to take up the time of the House any further but I would reserve my other comments for suitable occasions if and when they arise.

Sardar Bhopinder Singh Man (East Punjab: Sikh): *[Mr. President for a country which has passed through one historic phase of subjugation, it is natural that while framing its constitution, it should have a bright vision. Progress is liable to be impeded, if high ideals are not kept in view. It is an essential for progress: Differences do occur among the people, but on such occasions we have to see with what speed to proceed, which would enable us to reach our destination. In political matters it is wrong to ignore a reality and to take any hasty and unbalanced step, howsoever progressive the step may be. I congratulate the Drafting Committee for visualizing the conditions in their true perspective and solving various problems according to the exigencies of the time. Criticism is being levelled from two points of view. A strong Centre and retention of residuary powers have become object of criticism by some people. Undoubtedly the position of the Congress also has been the same. But under changed circumstances and in the light of old experiences and partition of the country, some people demand a strong Centre. In opposing this the example of Russia is quoted. But it is forgotten that Russia has handed over these powers to her units after a dictatorial regime of 30 years.

I think, slowly and gradually as the country advances socially and economically, different provinces might get this freedom in instalments. In accepting these principles, I do not think it expedient to interfere in the day-to-day working powers of the provinces, which have been handed over to them by the Centre. Clause 226 can be cited as an example. This clause has been discussed in the Assemblies of the different provinces where it has been disapproved.

Another question is the problem of Minorities. While considering this question, the members of the Majority Community are touched. They are influenced by the past happenings. But consider it minutely. Formerly, in our country there used to be the third power which always induced them to become unreasonable. I regret that as a consequence one important minority succumbed to this temptation and adopted an unreasonable attitude and got the country partitioned. But, Sir, this cannot be said regarding other minorities. The minority, to which I belong, has always responded to the call of the country and in spite of their very small number has played a big part in every battle of freedom for the country. Therefore, when I invite your attention towards me, as a member of the minority community, it is not my intention to raise communal issue nor to weaken the nation or the country; rather I say this as a patriot, who feels that to gain the goodwill of the minorities is to add to the glory of the country and to increase the strength of the nation. Now, when there is no third power and the days of the unreasonable attitude of the minorities has come to an end, the responsibility of the majority has increased. The majority has to gain the confidence of the minority. I hope with the attainment of power, the majority will be able to dispel the doubts and misgivings of the minority. It will have to gain the confidence of the minority.]

Shri R. V. Dhulekar (United Provinces: General): *[Now there is no minority here.]

Sardar Bhopinder Singh Man: *[Well, you have already accepted it. You have accepted it in two different clauses on the basis of religion and language.

Sir, while I say that in the Draft Constitution problems have been solved according to the exigencies of the time, I shall be failing in my duty, if I did not bring to your notice that in clause 13 relating to the fundamental rights and more particularly the rights of citizenship, such difficult conditions have

*[ ]Translatation of Hindustani speech

been laid down that all the rights have been rendered nugatory. So far as finance is concerned, special consideration is to be given to East Punjab and West Bengal which have been affected very much due to partition. Along with it the clause relating to the citizenship rights should, in my opinion, be made more elastic for the refugees. It would be difficult for lakhs of refugees coming from far off places to appear before a District Magistrate for filing the declaration that they intend to adopt the citizenship of India.

In many cases it is quite possible that the people will have to come from a distance of 40 to 50 miles and they will have to spend a lot for their journey. Therefore, it is not expedient to force the people like this, more particularly in the Punjab where they have no arrangement of a fixed place of residence.

There is yet another and last point. I have observed it since yesterday that endeavour is being made to solve the language problem by giving an emotional tinge. In my opinion, there should be no display of sentiment while solving the language problem. At times it takes a religious turn. In my opinion the Congress stand should be maintained in solving the language problem and the numerous resolutions passed by the Congress previously, regarding the language problem, should stand.]

Mr. Frank Anthony (C.P. and Berar: General): Mr. President, Sir, although Dr. Ambedkar is not present in the House I feel that, as a lawyer at least, I ought to congratulate him for the symmetrical and lucid analysis which he gave us of the principles underlying our Draft Constitution. Whatever different views we may hold about this Draft Constitution, I feel that this will be conceded that it is a monumental document at least from the physical point of view, if from no other point of view. And I think it would be churlish for us not to offer a word of special thanks, to the members of the Drafting Committee, because I am certain that they must have put in an infinite amount of labour and skill to be able to prepare such a vast document.

Dr. Ambedkar referred to the fact that while there was a necessary minimum of rigidity and legalism in a federal constitution, an attempt had been made to give it the maximum of flexibility by accommodating as much as possible local needs and local circumstances. He also pointed out that this flexibility had not been over-carried to the extent of encouraging chaos. For instance, on fundamental matters an essential unity and integration had been retained by having uniform laws, by having a single and integrated judiciary, by having a Central Administrative Service. Dr. Ambedkar also indicated that the Constitution sought to strike a balance between giving the Centre too much or too little power. He felt that it is a salutary principle not to over-weigh the Centre with too much power under which it might crash. Sir, I know that several Members in this House will not agree with me. I, also, regard as a salutary principle the need for not giving too much power to the Centre. Constitutionally, that is an unexceptionable principle, but in applying it, we must adapt it to local needs and circumstances, and, if we are frank with ourselves, we must admit that in this vast country of ours there is an inherent potential of divergence and disintegration. Because of that I feel that the maximum possible power that can be given to the Centre must be given to the Centre in the interests of the country, in the interests of the integrity and cohesion of the nation. I feel that in three particular matters there should be Central control. I do not know to what extent some of my friends will agree with me here.

The first matter in which control should, I feel, be by and from the Centre is with regard to the Police Administration. I feel that the Police Services throughout the country should be controlled from the Centre. You may not have absolute control. You may qualify it. But there should be some measure of control from the Centre. We have to remember that there was such a thing

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as the Indian Police Service. It was an all-India service, the members of which filled key appointments in the Police Administrations in the different provinces. In spite of that single unifying link, the Police Administrations in the different Provinces had varying standards. If we are frank, we will admit that in some provinces the Police Administration set general standards of efficiency and integrity. At the same time, we have also to admit that in certain provinces the standards set by the Police Administrations were not far removed from chronic inefficiency and chronic corruption. While we have sought to secure cohesion and integrity, with regard to our judiciary, with regard to the Central Administrative Service (I do not know to what extent members of the Central Administrative Service will be appointed to key positions in the Police Administrations of the different provinces), whatever integrity and cohesion we may secure by having a single judiciary, whatever integrity and cohesion we may secure through the Central Administrative Service, I feel that that integrity and cohesion will be largely stultified if the Police Administrations are left at the mercy of the different provincial Governments. I might add here that I feel this measure of cohesion by central control, to some extent at least, is vital. It goes to the roots of a healthy and stable society in our vast country.

The second matter on which I should like to see control from the Centre is education. I know that I am touching on a very controversial point, that I will be criticised and my suggestion will be completely repudiated by those who, I feel, think—and only think—in provincial terms. At the same time, I feel that my proposal that education throughout the country should be controlled from the Centre will have the approval and endorsement of eminent educationists of men, of vision and of men with statesmansnip. What is happening today? On the threshold of independence (I cannot help saying it) certain provinces are running riot in the educational field. Provinces are implementing not only divergent but often directly opposing policies. And it is axiomatic that a uniform, synthesized, planned education system is the greatest force to ensure national solidarity and national integration. Equally, divergent, fissiparous, opposing educational policies will be the greatest force for disintegration and the disruption of this country. I regret to say, but it is true, if we will only admit it, that educational policies conceived in narrow provincial and even parochial terms are today menacing us with the inevitable danger of raising cultural barriers, mental stockades, of building educational walls, over which it will become increasingly impossible to look. I feel very strongly on this subject, because I have not a little to do with education. I have a great deal to do with education from an all-India point of view, and I feel that if a policy of *laissez faire* at this stage is conceded or accepted from the Centre, then we are trifling with a force which in its potential for mischief, in its potential for disrupting this country is much greater than any disruptive tendency we have faced from religious communalism.

Finally, Sir, the subject which I feel should be also controlled from the Centre is the not negligible subject of health. Education and health are, to my mind, the two paramount problems which this country is faced with. And we cannot begin to liquidate ill-health and mal-nutrition, unless we do it on a uniform scale. I do not believe that we can begin to touch this, perhaps our greatest problem, by allowing it to rest at the mercies of the different provincial Governments which are, some of them, bound to have halting policies; some of them are bound to have disparate policies, some of them are bound to have divergent policies.

Lastly, I wish to endorse the sentiment expressed by Dr. Ambedkar when he commended the provisions on behalf of the minorities. I know that it is an unsavoury subject (after what India has gone through) to talk of minorities or in terms of minority problems. And I do not propose to do that I do not propose to commend these minority provisions, because they have already been accepted by the Advisory Committee; they have been accepted

by the Congress Party; they have also been accepted by the Constituent Assembly. But I feel I ought to thank and to congratulate the Congress Party for its realistic and statesmanlike approach to this not easy problem; and I feel we ought particularly to thank Sardar Patel for his very realistic and statesmanlike approach. There is no point in blinking or in shirking the fact that minorities do exist in this country, but if we approach this problem in the way the Congress has begun to approach it, I believe that in ten years there will be no minority problem in this country. Believe me, Sir, when I tell you that I, at any rate, do not think that there is a single rightminded minority that does not want to see this country reach, and reach in the shortest possible time, the goal of a real secular democratic State. We believe—we must believe—that in the achievement of that goal lies the greatest guarantee of any minority section in this country. As Dr. Ambedkar has said, we have struck a golden mean in this matter. The minorities too have been helpful. There is no doubt that we went more than half-way to meet the Congress Party and the Congress Party also, although it is very difficult for a member who is not a member of a minority community, to appreciate the difficulties and anxieties of a minority, has done that and we are deeply grateful to them for it. I believe that in these provisions we have struck a mean—a mean by which through a process of evolution, through a process of natural and easy transition, if we all play the game (as I believe we will) this country will achieve the only goal which we all want to achieve, namely, a goal where we think of ourselves as Indians first, last and always. One of the realisations which impressed itself very strongly on my mind when I attended, recently, the Commonwealth Parliamentary Conference was that the eyes of the world are on India. People realise that when India comes into her own, the balance of power, industrial, economic and even military will be affected throughout the world. We all believe that India will come into her own. I am one of those who believe that India will attain her fullest stature in a secular democratic society. There may be shortcomings and imperfections in this Constitution which are inevitably the result of necessary adaptation. But I believe that in this Constitution we have both the opportunity and the guarantee of a secular democratic society in this country.

Finally, Sir, I wish to say that it is not so much on the written word of the printed Constitution that will ultimately depend whether we reach that full stature, but on the spirit in which the leaders and administrators of the country implement this Constitution of ours and on the spirit in which they approach the vast problems that face us; on the way in which we discharge the spirit of this Constitution will depend the measure of our fulfilment of the ideals which we all believe in.

Shri Krishna Chandra Sharma (United Provinces: General): I join in the pleasant task to compliment Dr. Ambedkar for the well worked out scheme he has placed before the House, the hard work he was put in, and his yesterday's able and lucid speech.

Sir, ours is a Democratic Constitution. Democracy involves a Government Constitution is not an end in itself. A Constitution is framed for certain objectives and these objectives are the general good of the people, the stability of the State and the growth and development of the individual. In India when we say the growth and development of the individual we mean his self realisation, self-development and self-fulfilment. When we say the development of the people we mean to say a strong and united nation.

Sir, in considering a Constitution we have to take note of the fact that the of, by, and for the people. In democracy, the combined wisdom of the people

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is regarded as superior to that of any single king or tyrant or indeed to a group of men. Moreover, democracy emphasizes the supreme good as being the welfare of the people. Political institutions are justifiable only in so far as they lead to this result and not by any pomp and show attached to them. These being the fundamentals of democracy, we have to judge whether the Constitution placed before us will make India a strong united nation with the possibility of self-fulfilment, self-development and self-realisation of the individual.

Sir, India needs wealth and when we say India needs wealth, we mean that India is a poor country and therefore should be strong enough to compete with any great country in the world and erect it on a footing of equality. Now, there was a time when wealth was regarded to consist in gold and silver or some other resources of the country. In the modern context, the wealth of a nation consists primarily in the limbs of its young men, their character and brain and their working capacity. Now, in this Constitution, there is not a single item or provision anywhere to make the people work or to make them grow. You have got directive principles. There, the State endeavours to give primary education and to find work and employment. The State does not take the responsibility to make the people work, on the principle that he who does not work, neither shall he eat. This is an important question. We should have provision for enforcement of work for able-bodied citizens. So Sir, in the directive principle which a learned friend of mine has criticised, there is no legal obligation imposed on the State to fulfil the rights given in the Constitution. I suggest that we make a provision that any law made in contravention of these principles shall to that extent be void. This will not affect the present position. It will give jurisdiction to a court of law, though only a negative right to the people to move a court that any law which goes against the interests of the people, against providing primary education for the children and against providing work and employment to the people should be declared void. The court will have jurisdiction to declare that such and such a law is void, because it contravenes the general principles laid down in Chapter IV.

The second thing I wish to emphasise in the directive principles is that for the growth of democracy, a free and healthy public opinion is necessary. The position is that in mediaeval times one dared not think freely but in these enlightened times one can dare think freely, but he cannot. Look to the spectacle of the man who by black-marketing and by doing things a decent man will not do amasses fabulous wealth. He buys a dozen of educated women, roams about in the world and gets control over twenty Provincial dailies. He by unscrupulous propaganda gets hold on the mind of the people and passes as a benefactor of humanity. Do you think this is democracy? Do you think there is any possibility for the growth of an honest, independent citizen in a country where such a thing is possible? I, Sir, with all the force at my command protest that such a thing should not be allowed to happen in this great country. You should and you can make it impossible for such things to happen by preventing the abuse of wealth or the amassing of wealth in the hands of individuals to that extent. You should do this control of the Press and provide for a healthy and independent press so that effective independent opinion should be possible. For instance, I would refer to the provisions of Chapter II of the Russian Constitution. There are two articles there—14 and 18. They lay down that the State will compel every able-bodied citizen to work and further in another article it is laid down that the Press would not be allowed to prejudice or affect the growth of effective independent opinion. This effective opinion is the backbone of democracy.

Having dealt with directive principles, I pass on to Chapter XIV relating to minorities. As I said, this great country needs unity. The object is a united nation. Much has been said about the rights of minorities. I do not think our minorities are minorities in the real sense of the term or the classes or groups accepted by the League of Nations. We all belong to the same race. We have all lived in this country for centuries, for thousands of years. We have imbibed a common culture, a common way of living, a common way of thinking. Thus I do not understand the meaning of giving these special privileges in Chapter XIV. It creates statutory minorities and to say that the thing will last for ten years only is to forget the lesson of the past. What happened in the past? You gave certain rights and privileges to Muslims as such and those rights and privileges, it was hoped, would in the course of time automatically cease, that the Muslim community would realise the futility of those special privileges and would associate itself with the common people of the land and give up those privileges. But the result was the partition of the country. Once you give to a certain group of people, not on their functions, not because they are doing something for the country, but simply because they belong to a certain group or class, certain special privileges, you perpetuate what is generally the fault in democracy, namely, the giving rise to of groups or classes which would do things detrimental to the country as a whole, things which would serve their selfish ends, or the ends of the groups or classes they belong to. Cliques and intrigues will do neither any good to the groups or classes they represent nor to the country, but in the name of that group or clique they will serve their own selfish ends. While it would stand in the way of a united nation it will not do any good to those classes or groups and would perpetuate what is, as I said, generally the defect in democracy. I would therefore suggest that this Chapter better be altogether omitted and if there are any safeguards, or any encouragement, necessary for the backward classes or certain other classes, there might be other means, namely, giving scholarship to deserving students, giving other financial help, opening institutions and other facilities which are necessary for their amelioration and lifting up; but to perpetuate division in the body politic, to perpetuate division in the nation, would be detrimental to the healthy growth of the nation and would do an incalculable harm to us and our posterity.

Shri T. T. Krishnamachari (Madras: General): Mr. President, Sir, I am one of those in the House who have listened to Dr. Ambedkar very carefully. I am aware of the amount of work and enthusiasm that he has brought to bear on the work of drafting this Constitution. At the same time, I do realise that that amount of attention that was necessary for the purpose of drafting a Constitution so important to us at this moment has not been given to it by the Drafting Committee. The House is perhaps aware that of the seven members nominated by you, one had resigned from the House and was replaced. One died and was not replaced. One was away in America and his place was not filled up and another person was engaged in State affairs, and there was a void to that extent. One or two people were far away from Delhi and perhaps reasons of health did not permit them to attend. So it happened ultimately that the burden of drafting this Constitution fell on Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable. But my point really is that the attention that was due to a matter like this has not been given to it by the Committee as a whole. Some time in April the Secretariat of the Constituent Assembly had intimated me and others besides myself that you had decided that the Union Powers Committee, the Union Constitution Committee and the Provincial Constitution Committee, at any rate the members thereof, and a few other selected people should meet and discuss the various amendments that had been suggested by the members of the House and also by the general public. A meeting was held for two days in April last and I believe a certain amount of good

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work was done and I see that Dr. Ambedkar has chosen to accept certain recommendations of the Committee, but nothing was heard about this committee thereafter. I understand that the Drafting Committee—at any rate Dr. Ambedkar and Mr. Madhava Rau—met thereafter and scrutinised the amendments and they have made certain suggestions, but technically perhaps this was not a Drafting Committee. Though I would not question your ruling on this matter, one would concede that the moment a Committee had reported that Committee became *functus officio*, and I do not remember your having reconstituted the Drafting Committee. The point why I mention all these is that certain aspects of our Constitution have not had the amount of expert attention that was necessary, the amount of attention that could have been provided to it if a person like Mr. Gopalaswami Ayyangar or Mr. Munshi or certain other persons had attended the meetings all through.

Sir, I would draw your attention to one aspect of the Draft Constitution, *viz.*, the financial provisions in the Constitution. You, Sir, appointed an Expert Committee. Well, to my own mind, the way in which the Committee worked was not altogether satisfactory, though the members of the Committee were eminent enough. I had the opportunity of giving evidence before the Committee and I did come away from that meeting feeling that the Committee was not seized of the seriousness of the matter they were entrusted with, nor were they competent to advise the Drafting Committee in regard to the subjects referred to them. Sir, the proof of the pudding is in the eating. I have with me a copy of the report of the Expert Committee, and I am not satisfied with it. Circumstances happened that the House could not discuss the report of the Expert Committee and I believe that the Drafting Committee were more or less left to decide for themselves whether those recommendations were worthy of being incorporated or not.

Sir, I have a few remarks to make in regard to the report of the Expert Committee. The Expert Committee did not seem to be sure of itself. Actually, though the terms of reference which you, Sir, furnished them were wide enough, wide in the sense that going on the experience of the Government of India and the provincial governments during the last ten years they were competent even to suggest alterations of the various heads in the lists enumerating Central and State subjects if necessary, they did not attempt to seize the opportunity that you furnished to them, but on the other hand they have mentioned explicitly in their report that they preferred in the circumstances that exist in this country to adopt the *status quo* rather than attempt to make any revolutionary changes in the financial structure of the country. That, Sir, I am afraid, was very unfortunate.

The second point on which I would like to touch is about paragraph 49 of the report with regard to the items in provincial list, Nos. 48, 49 and 51. 51 relates to agricultural income-tax. 48 and 49 relate to Estate Duty and Succession Duty on agricultural land. They felt that in the present context of things, the difference between agricultural property and non-agricultural property had no validity. I think they were quite right, but they have not had the courage to suggest that in the Draft Constitution this distinction which was imported for specific reasons into the Government of India Act should be done away with. I propose Sir, if the House would permit me, to table an amendment seeking to do away with this distinction. Not that I feel that the powers of the provinces should be encroached upon but I feel that the only way in which the revenues of the provinces could be augmented is by unifying income-tax, whether it is agricultural or non-agricultural property, unifying Estate Duty whether it is agricultural or non-agricultural property and so on and making the advantage of such unification available to the Provinces.

Sir, one other recommendation of the Expert Committee is, I am afraid, rather mischievous. That is, they have suggested in regard to Sales Tax—

which is item 58 in List 2—that the definition should be enlarged so as to include 'Use Tax' as well, going undoubtedly on the experience of the American State Use Tax which, I think, is a pernicious recommendation. I think it finds a reflection in the mention of Sales Tax in Item No. 58 which ought not to be there.

The other recommendations of the Expert Committee like increasing the share of income-tax to the provinces from 50 per cent to 60 per cent and incorporating in the pool the proceeds of Corporation Taxes as well as taxes on Federal emoluments have been more or less dismissed by the Drafting Committee.

So I do feel that either the Drafting Committee was not competent to examine even the half-hearted recommendations made by the Expert Committee or they felt that it would be better to tread on safer ground and adopt the *status quo* which idea, I think, more or less dictated the decisions made by the Expert Committee itself.

Then I come to a new provision that has been made in the financial sections of this Draft Constitution, viz., Article 260. Article 260, Sir, speaks of a Finance Commission. In fact, Sir, in the terms of reference that you had sent to the Expert Committee you yourself made that suggestion, but I do not know if it is at all necessary for us to incorporate in the constitution an Article like 260 which is mandatory only in regard to one particular aspect of it, namely, the appointment of a Commission. The duties assigned to it, to arbitrate between provincial units and the Centre and also to act as a sort of Grants Commission, can actually be done by any Commission approved by any law enacted by Parliament. Parliament is empowered to appoint a Commission of this nature so long as the recommendations of the Commission are not mandatory on the Central and provincial governments which is the position as the wording of Article 260 as it now stands. So, what I really feel would be wiser to insert it, in view of the fact that we have had no time to examine the financial implications of this Constitution and in view of the fact that we could not apportion the heads of income properly between the provinces and the Centre, a provision in the Constitution itself for a Commission which will go into the entire financial structure of the country and make recommedations even in regard to changing the heads in the lists assigned to the provinces and the Centre. As a matter of fact, mention has been made by the Expert Committee that it should be done, though they have not gone further into it. What I would like to have in this Constitution is that a Finance Commission should be appointed and that Commission should be empowered to make recommendations to make alterations in both lists 1 and 2 and that the recommendations of that Commission should be adopted as a part of the constitution and should be obligatory on the Government of India and the provincial governments without going to the needless process and trouble of an amendment to the Constitution. I do not know, Sir, if such a thing is possible but I see that the mover of this motion is not here—probably he may have been able to enlighten me on this point if he were here—but I do feel that an attempt should be made to insert a provision of this nature in the Constitution. I would only say, Sir, when dealing with this particular aspect of the matter that I feel that the defects in regard to the distribution of the financial powers in the 1935 Act have not been properly appreciated and no serious attempt has been made to devise methods to increase the revenues of the provinces which do badly need additional resources and to have a more rational and equitable system of taxation in this country.

Sir, one or two other aspects I would like to touch on before I sit down is this. Sir, the Mover of the motion mentioned about the need for a strong Centre. I find that that sentiment has been echoed by Mr. Anthony. Well, I think in the uncertain state of events which lie ahead of us and in view of the fact that the main objective of our having achieved freedom is to better the

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lot of the lowliest in this country, namely, to improve the economy of the common man, the only way in which that can be achieved is to take certain amount of powers to the Centre which can direct the steps to be taken to this end. I am all for a strong Centre, if the provinces' powers could be preserved intact. It is also necessary, Sir, as I find from a letter written to me recently by a former Member of the Government of India and a well-known lawyer who has complained, that Provinces as they are today are merely going off the rails and are imposing all kinds of parochial and provincial restrictions in regard to the internal economy of the province and he has doubted whether it was wise to have a federal system of Government in the present state of things and whether we should not go back to the unitary system. That is there and when we look at it from that point of view, we feel that a strong centre is necessary. I would also say that in certain matters Central direction may probably be useful. My honourable friend Mr. Jagjivan Ram has found a lot of difficulty in implementing his labour policy because of the imperfect power that is vested in the Central Government. Actually I see that Dr. Ambedkar has said that Article 60 is now so worded that the power of the Central Government in regard to concurrent subjects will also extend to giving executive directions which are non-existent at the present time. But I do not think, as I read the Article 60, the power is explicitly there but that is a point which Mr. Jagjivan Ram has often mentioned and I always felt that in regard to labour matters, it is better that a larger amount of power is vested in the Centre both for purposes of co-ordination and also because in the provinces the various vested interests prevent progressive labour legislation being undertaken. So, I would perhaps suggest either an explicit mention in Article 60 that in regard to concurrent subjects the power of the Central Government to give executive directions will also be there or to put labour legislation in List 1.

One other matter in which perhaps I had some sympathy with Mr. Anthony's suggestion, though I feel I must resist all other suggestions he has made in regard to strengthening the Centre, is in regard to public health. There are certain aspects of public health where the Central Government could do a lot of good. Actually, disease in this country is universal. It is not the main privilege of Madras, Bombay or U. P. and therefore in the matter of public health legislation and also in the matter of maintaining institutes for purposes of research in health, I think some amount of power could be given to the Centre and therefore, that item could come into List 3. But, Sir, while I feel that a strong Centre is necessary, because I visualise the most important task before us is the implementing of the economic objectives, I am rather disinclined to pursue that idea to its logical end, because of what happened yesterday here. Sir, I assure you that I am not going into any controversy, because a controversy can be raised at the proper time. We found yesterday the display of a certain amount of intolerance, of a certain amount of fanaticism, of a certain amount of thoughtlessness on the part of people whom I always regarded as being highly intellectual, highly developed in the matter of aesthetic sensibilities and civilization. I refer, Sir, to a type of imperialism that seems to threaten us to-day which perhaps driven to its logical end will bring into being a type of totalitarianism and its reaction on the rest of the units of the Union of India to be. Sir, I refer to this question of language imperialism. There are various forms of imperialism and language imperialism is one of the most powerful methods of propagating the imperialistic idea. It is no doubt true that a large portion of this country do speak a particular language. If I were perhaps a Hindi speaking person, I would certain visualise the days when the Hindi-speaking areas would be a powerful area, well-knit with United Provinces, the northern portion of C.P., portions of Bihar, Matsya Union, Madhya Bharat, Vindhya Pradesh, all together reproducing, Sir, the greatness of the Asokan Empire, the Empire of Vikramaditya and that of

Harshavardhana. It is a thing which just tickles your fancy and if you happen to be a native of the area your imagination more or less takes you to the glories of the past which one seeks to bring into being. But what about the other areas? What about the level of education that we have now attained in those areas and the ideas of freedom that have grown with it? Believe me, Sir, that the hatred that we in South India had for the English language has now gone. We disliked the English language in the past. I disliked it because I was forced to learn Shakespeare and Milton, for which I had no taste at all, but today it is no longer a matter of duress. But if we are going to be compelled to learn Hindi in order to be a member of the Central Assembly in order to speak out the grievances of my people, well, I would perhaps not be able to do it at my age, and perhaps I will not be willing to do it because of the amount of constraint that you put on me. I shall deal with this particular subject later on at the appropriate time but I do feel, Sir, that my honourable friends of the U. P. and C. P. and portions of Bihar will take note of the fact that while they are enthusiastic for their own language, and while they want the English language to be wiped out of this country, they must also recognise that there are a number of people all over India who do not understand the Hindi language. Sir, my honourable friend yesterday resorted to a simile, to strengthen his case. I am accustomed to hear similes. I have a friend who is extraordinarily good in similes and parables, who is somewhere near here now. But what about the simile used by my friend? My honourable friend said: "Are there not a number of people who do not understand English, who trust the people who speak the language?" Yes, there are a number of people in this House and elsewhere who do not understand English. It may be my neighbour from Madras does not understand English and he is prepared to trust me, but that does not mean that a person in South India would be content to trust somebody in U.P., however good Pandit Balkrishna Sharma may be and whatever assurance I may carry forth from Delhi to the South. I know he is an ideal legislator, has an aesthetic soul, is a poet and all that sort of thing—it does not mean that merely because in one particular area there are people who cannot understand the language, they should be prepared to trust those people, who understand it and who are a thousand miles away to carry on the administration. Has anybody in this House given one moment of thought to those of us of this House, who have been merely gaping unintelligently because we could not understand what is being said? It may be, as my honourable friend, Mr. Satyanarayana, who propagates Hindi in South India without effect told me, that there was not much substance in the Hindi speeches that have been made; perhaps it is so, but I would like to know what has been said; I would like to counter the points made. I felt completely helpless in a situation where I am bound to have brought to bear all my faculties to understand what has been said for the benefit of the future of my country, for the benefit of the future of my people. This kind of intolerance makes us fear that the strong Centre which we need, a strong Centre which is necessary will also mean the enslavement of people who do not speak the language of the legislature, the language of the Centre. I would, Sir, convey a warning on behalf of the people of the South for the reason that there are already elements in South India who want separation and it is up to us to tax the maximum strength we have to keeping those elements down, and my honourable friends in U. P. do not help us in any way by flogging their idea 'Hindi Imperialism' to the maximum extent possible. Sir, it is up to my friends in U.P. to have a whole-India; it is up to them to have a Hindi-India. The choice is theirs and they can incorporate it in this Constitution; and if we are left out, well, we will only curse our luck and hope for better times to come.

Mr. President: We shall now adjourn for lunch. Before we adjourn, it has been pointed out to me by the office that some difficulty is being experienced

[Mr. President]

in distributing papers because some members have not reported their arrival or given their addresses. I request the members to leave their addresses in the notice office so that papers may be sent to them. Those who have not done so will kindly do so.

We shall adjourn now till Three of the Clock.

The Assembly then adjourned for lunch till Three of the Clock.

The Assembly re-assembled after lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Shri B. Das (Orissa: General): Mr. Vice-President, Sir, at the outset I must thank the Honourable Dr. Ambedkar for the brilliant analysis of the Constitution that he presented to the Constituent Assembly. Sir, I equally thank his colleagues who laboured hard for six long months to forge the Constitution that is presented to this House. While paying respect that is due to them, I will be failing in my duty if I do not state here that the Drafting Committee has exceeded the terms of the reference and power that was vested in them by the Honourable House. Sir, the House, if I remember aright, decided to refer the decisions to the Drafting Committee to be presented in the shape of a bill and a subsequent motion by an Honourable Friend in this House gave them the option of making certain changes which might be found necessary in the course of the drafting changes flowing from decisions. But, Sir, in the course of drafting the Bill they have not only assumed to themselves the powers of the Drafting Committee but also the powers of a Select Committee—nay—something more—the Constituent Assembly itself. They have made certain changes for which they had no authority. Reference has already been made to the question of bringing in new changes in the Constitution for which they had no authority, questions which were not discussed nor were decided in the Constituent Assembly. Certain changes they themselves have made which they admit in the report and the changes have been marked and new questions have been introduced. Three committees were appointed either by the House or by the Honourable the President—the Sarker Committee, The Centrally Administered Areas Committee and the Minority Committee. I must state here that we have not discussed those reports nor has the Assembly come to any decisions and yet important changes have been made not in terms of reference or the recommendations of the Committee but in certain cases something more than what the Committee have recommended; especially in this case need I draw the attention of the House to the recommendations of the Sarker Committee involving very important questions, viz., the financial relations between the Centre and the Provinces as also among the provinces themselves. I must frankly say that the Drafting Committee had no jurisdiction and all that has been done is done without the power or authority of this House.

Similarly, changes have been made in the Constitution without a decision of the Assembly. Sir, I will, having stated so far about the decision taken by the Drafting Committee itself, come to the question of the Draft Constitution.

Sir, the procedure adopted by the Honourable President regarding discussion of the Draft Constitution is, I am afraid, peculiar. It is neither the procedure that relates to a Bill, nor the procedure that has been followed in other Constituent Assemblies. We constituted the Drafting Committee on the 10th of August 1947. After six months of labour, a report was presented to the Honourable Members of this House. The report was circulated about the middle of February 1948 and a very short time was given for Honourable Members to place their views before the Committee. I must frankly confess that not only was the time given to us short, but the time that was chosen for offering suggestions was very inopportune, in the sense that both the members of the Central Legislature as also members of the Provincial Legislatures were busy with their Budgets. Therefore, the attention that was necessary and that ought to have been given to such an important thing was not given for no fault of the members themselves. Thus the help which the Drafting Committee must have received or has received necessarily remains very small and inadequate. Having said so much about the time given to us for submitting our suggestions, I pass on to the other question that was raised by Mr. T. T. Krishnamachari.

[Shri Biswanath Das]

Not all the members of the Committee have taken part in the discussions of the Drafting Committee, not even I believe the majority of the members have given their joint thoughts. Therefore the decision of the Drafting Committee boils down to be the decision of a few Honourable friends. They may be eminent in their own way, but we want more minds, more thought and more discussion on this question. There was not enough, I claim. A year passed without much work and a lot of work could have been done and there would have been no complaint today either on the score of taking consultations or taking help of members or placing of the views of different members of the Constituent Assembly before the Drafting Committee. It is a matter to be regretted that even today we do not have before us the decisions or the discussions of the various legislatures. We claim here that we are delegates representing provinces and we do not know what the provinces have decided and what their views are. If we could know them, this would certainly give us good guidance in giving our decisions. Let me hope that at least before the actual Bill is taken for discussion, we will have before us the discussions or decisions of all the provincial legislatures whom we have the honour to represent in this Constituent Assembly.

It behoves me to place my protest here that a Bill of this importance has not been thoroughly scrutinised by a sort of Select Committee taking into consideration the various representations made from all over India and also views expressed by the members of different provincial legislatures. If such an occasion had been given, it would have been welcome. If a session of the Constituent Assembly had been held in the month of May, 1948, sitting and discussing, say, for about a week or so, the matter could easily have been referred to a Committee which would have taken the place of a Select Committee, and they would have thoroughly scrutinised the various Sections by this time, taking into consideration the views of different organisations. I feel that due scrutiny has not been made by the members of the Drafting Committee, nor is this House given necessary time to discuss the whole question, nor even the opportunity to place the views of members properly and fully either before the Select Committee or before this House. I must again state that there was a meeting of four committees in one place—that was about 9th or 10th April 1948—a combined meeting of the Drafting Committee, the Union Powers Committee and the Union Committee and the Provincial Constitution Committee. I must frankly state that the decisions that were arrived at have not been accepted by the Drafting Committee. Therefore, is this a Drafting Committee, or a Select Committee, or an all-powerful Constituent Assembly? It remains for me, no, not for me, but for the Honourable Members of the House to decide. Under these circumstances, I do not at all feel happy over this performance.

One other item I will state before I resume my seat. It is an important one. I refer specially to the question of fundamental rights. Fundamental rights, specially Section 7, lays down that any Act which comes into conflict with the fundamental rights will be swept away, and the same Section defines the law to include Ordinances, Rules, Regulations and the like. That means that all the existing laws, provincial, central as also parliamentary laws that are in operation including Regulations and a huge number of Codes will be swept away by the operation of the justiciable portion of the fundamental rights. I am asking my Honourable friend Dr. Ambedkar whether he has examined thoroughly the implications and effect of these fundamental rights on the existing laws, both central and provincial. Are you going to create chaos in the country? I believe it was left either to the Secretariat of the Constituent Assembly or to the Central and Provincial Governments to determine the effect and implications of these laws. The British Government before it passed a Constitution Act undertook an examination as to the implications of the Constitution on the existing laws, and after being satisfied with it,

they provided three different stages. The first stage was provided in the Act itself, that the existing laws shall continue in operation. The second was taken by allowing authority to take to adaptations of the Acts that are in existence and the third stage was in providing for the issuing of Orders in Council. Nothing of this kind has been attempted here nor an examination of the effect upon existing laws undertaken. It was left to me to protest against this in April 1947. I said this is unfair to the country and would bring trouble and misery. An examination was promised, and I state that this examination has not yet been undertaken, at least to my knowledge. This examination should be taken up in right earnest. I hope my speech proves that the necessary discussion has not been possible.

Shri B. Das (Orissa: General): Mr. Vice President, Sir, at the outset I must pay my tribute to the Drafting Committee that did a greatly arduous work and put into shape and form the Constitution Bill which we are considering today and which we have to alter according to our will, so that a proper sovereign Constitution will be designed for India. While I pay my tribute to Dr. Ambedkar and his colleagues, I must also pay the tribute that your Advisers deserve. Our great Constitutional Adviser, Srijut Narasinga Rau has rendered yeoman service in assisting the Drafting and other Committees in bringing the Constitution to this safe anchor. We are also indebted to our friend Srijut Narasinga Rau for raising our international status at the U.N.O. While we are still a Dominion, and I always think I am still a slave of England, my friend went there, raised our status and dignity and showed the West that India can contribute to world peace and happiness.

Now, Sir, I agree with some of the draft articles of this Constitution Bill. I may not be able here within the short time at my disposal to state the issues where I agree. I would rather start by enumerating the points where I disagree with the draft constitution and where the House must deliberate and so change the draft that the Constitution is truly for Indians and not based on past traditions and past connections with the British.

Now I will take the new draft of the Preamble to which I strongly object. The Objectives Resolution that we adopted in January 1947 stated that the Constitution is "Independent Sovereign Republic". On 21st February 1948 my friend Dr. Ambedkar changed it into "Sovereign Democratic Republic", but we find in another note of 26th October 1948 it has been changed into "Sovereign Democratic State". I do not know how this Drafting Committee can change the Objectives Resolution that this House passed in January 1947. There we have agreed unanimously that the Preamble should be "Independent Sovereign Republic" and I am one who will oppose the amended draft Preamble very strongly.

There are certain points here in which the House never gave its opinion. They were controversial. They were allowed to stand over, but still I welcome the new amendment to article 5 that the Drafting Committee has suggested. It should be further improved. I am referring to the definition of "citizenship". It requires closer examination. The Drafting Committee in its first draft was hesitant but in another suggested amendment they have introduced a better draft. It needs further improvement.

Regarding Fundamental Rights, there were two or three points where the House did not reach any conclusion. I do hope that we will be allowed sufficient time to discuss those without accepting the Drafting Committee's recommendations. One thing I am happy about is that the women of India have won a position which women in no other independent nation enjoy. They have secured equal rights, equal privileges, equal opportunities, with men and that is one great achievement in Fundamental Rights of our citizens.

Sir, I very strongly oppose the idea of nominated Governors. I do not know why the idea of those in which my friend Dr. Ambedkar is participating—the Government—should come into the drafting of this Constitution Bill. At no

[Shri B. Das]

stage have we found any representative of our Cabinet making here that suggestion. Governors should be elected by Provincial Assemblies and they need not has the residents of that province to contest the Governorship. We do not want to hand our powers to the Government, be he the President or any other able Administrator including Dr. Ambedkar. We do not want the Governorships or Ministerships to be confined to a few individuals and their associates.

My greatest objection—and one on which the whole Constitution Act will founder—is in relation to financial allocation as between the provinces and the Centre. I am surprised that a brave man like my friend Dr. Ambedkar is fighting shy to discuss the finances of the Provinces and piously recommend that for five years after the promulgation of the Constitution Act we should not disturb the financial allocations. Very, very surprising indeed it was to me! It was the same attitude that the Colonial Government, that our former Government, took, and the supporters of that Government took in 1935. The foreign rulers wanted a top heavy central administration and starved the Provinces. I am surprised today to see that the same thing has been in the mind of the Drafting Committee! Of course, I concur with my friend Srijut Kamath that more Congress-minded men should have been in the Drafting Committee so that they will represent the principles and the thoughts of the people who have brought this Constituent Assembly to fruition and whose desire could have been reflected in the draft.

I am grateful to Mr. T. T. Krishnamachari for speaking out strongly. I find that in public health the range of expenditure in all the Provinces varied from 5·8 and 3·1 per cent. of the total expenditure. This was before the war in 1935-38; this is so after the war in 1947-48. Due to inflation, the expenditure has gone up three times in all the Provinces and at the Centre. This is a point which every province should examine and take note of. Poor provinces like Orissa [illegible] are going to examine the consequences of such a statement from Dr. Ambedkar. We want finances re-allocated so that provinces have resources to give effect to the second sentence in the Preamble:

"Justice,—social, economic and political."

Sir, I do not care for political justice. I want social and economic justice from this House for the people. And if the Honourable Ministers are found hostile to it, we will compel them to accept the majority view of the House and do justice—social and economic,—to the teeming millions placed under provincial administrations.

Shri Lokanath Misra: (Orissa: General): Mr. Vice-President, Sir, I am a new Member to this august House and never before have I taken any part in the proceedings here. I therefore would crave the indulgence of this Honourable House if I fail to make a coherent speech. But then I owe it to the people who sent me here to express in their behalf what I think is their view on this most important matter.

Sir, this Constituent Assembly which represents the sovereignty of India and which is supposed to give shape and form and prestige to our freedom is here deliberating on a Constitution that is supposed to be the guardian of our future. With that end in view, our leaders have laboured enough and hard and have produced a Draft Constitution which we are now going to discuss. But I cannot really congratulate the Drafting Committee to the extent that they have been congratulated on this draft.

Sir, my first point is this: that although Dr. Ambedkar has delivered a very brilliant, illuminating, bold and lucid speech completely analysing the Draft Constitution—here I must say that but for that speech I would not have been

able to find out the defects in the draft so much—I must say that the draft does not represent the Objectives Resolution which this sovereign body passed last year. So far as I have been able to read it and so far as I can remember, the Objectives Resolution was a magnificent product which represented the mind and spirit of India not only for the moment, but for the distant future too. What was the Objectives Resolution? That Objectives Resolution envisaged a federal constitution in which the provinces would have the residuary powers and the Centre would have no more and no less power than is necessary to bring the provinces into a coherent system. But this Draft Constitution, by whatever name it may be called, federal or unitary, parliamentary or presidential, is laying the foundation more for a formidable unitary constitution than a federal one. By unitary I mean that it has surreptitiously taken more power to the Centre than it has given to the provinces. Whatever Dr. Ambedkar might have said or might have been thinking of about giving power to the individual with all his disdain for our villages, I must say, this Constitution does give nothing to the individual, nothing to the family, nothing to the villages, nothing to the districts, and nothing to the provinces. Dr. Ambedkar has taken everything to the Centre.

And what is this Centre? By this centralization of power, I do not know what will happen in the future. But from my present experience I must say that the Government that we are now having has been so centralised and our people in power have become so greedy of power that in the name of law and order, peace and unity, they are liable to go astray easily if the country is not vigilant and the people are not relentlessly vigilant. I should therefore say that, whatever might be the future of India, we must once for all know and the people must once for all know and realize what is the ideal for which we are having this Constitution and what amount of freedom we are going to have.

I beg to question, Sir, whether we want a strong Centre. For what? Some people say that a great deal of provincialism is coming to the fore day by day and that there may be friction. Therefore, to start with, we must make the Centre so strong that it will be invincible. But this should not mean that we must be war-minded. We want a strong Centre. Strong against whom? Is it against Pakistan? Is it against Russia? Or is it against the people of India themselves? I am quite sure that if you can build on the solid foundation of India's past, which is nothing more and nothing less than the spirit or the inward vision of India or the inwardizing temperament of India, if you can think and speak in terms of the spirit and not of your external objectives, I am quite sure you can build an India quite united, quite strong and at the same time an example to the world. But if by taking so much power into the hands of the President or the Ministers, or the central oligarchy, we want to unite India, I am sure India will either break or it will be another menace to us and all.

Now, it has been said that the United States of America has got a federal constitution, but that gradually it is becoming a unitary constitution and that therefore it is getting better. It has also been said that as time goes on it is natural that the Centre must be taking more power and that the provinces and units must be losing more and more power. This is a temperament of war-mindedness or at least of panicky peace. Let us see to what effect the United States Government has taken more power. The effect can only be that they will be stronger against Russia or some other country. That means strong against external forces. I should say that the strength of a nation and the unity of her people do not depend upon the State power. It depends upon the realisation of the inner unity and the human spirit that makes all men brothers. Therefore if the words in the Preamble 'Equality, justice and peace' could have meaning only if we have a strong Centre, the sooner we are disillusioned, the better. I am wholly against a very strong Centre in the

[Shri Lokanath Misra]

sense that the Government will be so strong, though not dictatorial or oligarchic, that the provinces will lose all importance, all initiative and drive. That ultimately curbs the individual, below.

An Honourable Member just now said that we may have a strong Centre but no common language. I should say that we should be strong at the Centre if only we have a common language. If really we must have unity in India, we must have a common language. If we are not prepared to forego the provincial language how can we have unity and how does it lie in the mouth of a member to suggest that we must have unity, but no common language. He probably means that we must have a strong Centre with no common language which expresses an inherent common culture. The slogan of united India with a strong Centre is that way frightful. A strong Centre is not worthy of the struggle that may be in store for us. Now my time is up. I would have taken some more time to X-ray the speech of Dr. Ambedkar. I bow down to his knowledge. I bow down to his clarity of speech. I bow down to his courage. But I am surprised to see that so learned a man, so great a son of India knows so little of India. He is doubtless the very soul of the Draft Constitution and he has given in his draft something which is absolutely un-Indian. By un-Indian I mean that however much he may repudiate, it is absolutely a slavish imitation of—nay, much more,—a slavish surrender to the West.

Kazi Syed Karimuddin (C. P. and Berar: Muslim): Mr. President, Sir, I congratulate Dr. Ambedkar for the introduction of the motion for the consideration of the Draft Constitution of India. The speech that he delivered was a remarkable one and I am sure that his name is bound to go down to posterity as a great constitution-maker.

It was stated by him yesterday that the Constitution is the bulkiest in the world. In my opinion it is no merit in itself, unless there is substance in it. There is no doubt that we have copied provisions after provisions from foreign constitutions. This constitution is neither parliamentary nor non-parliamentary, and it is yet to be seen, when we begin to work it, whether it would work properly.

Sir, I have very serious objections to some parts of the Constitution. As Dr. Ambedkar himself has agreed, the continuance of the States is really not proper in India, *i.e.*, States or groups of States who will have the authority to legislate or to have separate Constituent Assemblies. In my opinion, it is really a stigma and a blot on the Constitution of India that even in the 20th century Rajas, Rajpramukhs and Nizams are allowed to continue and to have their dynasties also continued. All these institutions must be abolished and there should be similar Constitution for every State. All these States or groups of States should either be merged with the provinces or should be converted into independent Provinces.

Sir, the most important provision in this Constitution from the point of view of the minorities is the provision for reservation of seats with joint electorates. The Constituent Assembly last time considered the problem of separate and joint electorates with reservation of seats. The only provision made for the minorities now is joint electorates with reservation of seats. In my opinion, it is neither here nor there. Joint electorates with reservation of seats is absolutely of no consequence to the minorities. It would do them positive disservice. The representatives who would be elected under joint electorates with reservation of seats would not be the representatives of the minorities for whom reservation is given. Even a false convert, or a hireling of the majority party, would come in by the votes of the majority party. Therefore, my submission is that this provision is detrimental to the interests of the minorities. If the two resolutions regarding the continuation of separate electorates or joint

electorate with reservation of seats with a fixed percentage of votes of the community to which the candidate belongs which were rejected last time are not acceptable to the House, the minorities should forego this reservation of seats under joint electorates. Sir, this is going to create permanent statutory minorities in the country. It would be to the great disadvantage and detriment of the Muslim community or any other minority community which claims reservation, as there is no chance under this system for any real representatives of the minorities to be elected. Even when we are having separate electorates, we are not able to do any service to the community. We have thrown ourselves at the mercy of the majority and it is up to the majority to rise to the occasion and in this way the minorities and the majorities will be united together in the country to the advantage of both. We have seen how things have happened in India after 15th August 1947 and we were sitting in separate compartments helplessly. We should be prepared to have joint electorates and fight our battles on a common ticket. It is up to the majority to create confidence in the minorities and it is up to the minorities to come forward and co-operate with the majority. Therefore my submission is that reservation of seats will create more bitterness, more jealousies, more communal hatred and Muslim disintegration. This provision is not in favour of the Muslim community. It is no use accepting safeguards which are nominal and cannot be effective. This is my opinion. We must be left to our own fate and we are quite prepared to face the future. If at all the majority community want to protect the rights of the minorities, let them introduce the system of proportional representation. Proportional representation with multi-member constituencies with plural voting is the only democratic system known in Europe for the protection of Political and Communal minorities. Without any sacrifice of democratic principles the minorities can be protected. The rights of the minorities can be protected in another way and that is by the establishment of a non-parliamentary executive in this country. I was really surprised to hear Dr. Ambedkar, while he was introducing the Draft Constitution, praising the system of parliamentary executive, while in his book "States and Minorities" he has advocated that the system of non-parliamentary executive is best suited to protect the minorities, and I would like to read to him what he himself stated in the year 1947:—

"*Provisions for the protection of minorities—*

The constitution of the United States of India shall provide :

Clause 1

(1) that the executive—Union or State—shall be non-parliamentary in the sense that it shall not be removable before the term of the legislature.

(2) members of the executive, if they are not members of the legislature, shall have the right to speak in the legislature, speak, vote and answer questions :

* * * *

(4) the representatives of the different minorities in the Cabinet shall be elected by members of each minority community in the legislature by the single transferable vote.

(5) the representatives of the majority community in the executive shall be elected by the whole House by the single transferable vote.

* * * * "

In my opinion this is the easiest method to afford protection to minorities. What has happened in India? In all provinces there were acts of rioting, arson and murder and the ministers were not courageous enough to come forward and stop them immediately, being afraid of their constituents. If you introduce non-parliamentary executive, the members of the executive would not be afraid because they are not liable to be removed by their supporters. Therefore in parliamentary executive the Government is naturally weak, and vacillating because the ministers have to depend for their continuance on communally minded supporters.

[Kazi Syed Karimuddin]

Sir, the fourth part of the Constitution is the directive fundamentals which have been given. I want to tell Dr. Ambedkar that in his book, he has mentioned that all these principles and fundamentals should be mandatory. He has mentioned that these provisions should be enforced within a period of ten years. What is stated in Part IV is vague. What we want today is not mere talk of economic or philosophical ideals. We want an economic pattern of the country in which the lot of the poor masses can be improved. In this Constitution which is framed, there is neither a promise nor a declaration for the nationalisation of the industries. There is no promise for the abolition of Zamindari. It is nothing but a drift. It is nothing but avoiding the whole issue in a Constitution of a Free India. Not to have a definite economic pattern in the Constitution of Free India is a great tragedy.

One word more, Sir, and I have done. It is mentioned in a foot note to the Preamble that the question of our continuance in the commonwealth or otherwise is not yet decided. I am very sorry to point out that when the Objectives Resolution was moved, it was proclaimed to the world and to the Indians that India will be a free and Independent State. Why is this indefiniteness? At whose instance is this done, when by a resolution the sovereign Constituent Assembly of India had declared that India would be independent. I cannot understand how this position was taken and with whose authority and with whose consent this was done. My submission is that Dr. Ambedkar has gone beyond his powers in taking this wrong step. We have not forgotten the tragedies that have been committed in India. We have not forgotten the tragedy of Jallianwallah; we have not forgotten the support of British imperialism to the Union Government in South Africa against Indians; we have not forgotten the racial policy in Australia. Such an association identifies us with Fascism in South Africa and with racial discrimination in Australia and moreover it would be an absolute failure of our foreign policy of neutrality. In view of all this my definite opinion is that there is no other way except to be out of the Commonwealth. Pandit Jawaharlal Nehru in 1929 at Lahore has declared that unless British Imperialism and all that it implies is discarded, India could never be a member of the Commonwealth. I am very sorry my time is up.

Prof. K. T. Shah (Bihar: General): Sir, I have to join in the chorus of congratulations that have been offered to the Drafting Committee and its Chairman for the very elaborate Draft Constitution that they have placed before this House. I have particularly to felicitate the Law Minister for the very lucid way in which he has put forward the salient features of the Constitution for our consideration, and given us thought-provoking ideas, with reasons why certain items have been included and why certain others have been put in the manner they have been.

My congratulations, I venture to submit, are the more sincere, as I am afraid I am not able to take the same view on many of the leading issues involved in this Draft Constitution. I would invite the House, Sir, to consider that in the first place the principles on which the Draft is based, or the instructions for preparing this draft were prepared and given at a time when this country was passing through very serious crises and happenings which many of us deplore. Our minds were tense; our thoughts were fixed upon certain events, which, if I may say so, distorted our vision of the future India as it should be. Under the stress of those events, instructions were given and principles laid down which I for one feel on more sober consideration we may have reason to revise. When the proper time comes, Sir, I shall put forward suggestions for amending certain provisions in the Constitution, on which I will not take the time of the House at this moment. Certain general ideas, however, I would beg to place before this House at this stage which I think would require reconsideration;

and the foremost is, to use the words of Dr. Ambedkar himself: "the aims of this Constitution." What is this Constitution intended to do? The Constitution's aim, as explained by Dr. Ambedkar, or as can be gleaned from the wording of the Constitution itself, is almost entirely political and not at all social or economic. I hope no one will think it is a bee in my bonnet when I put forward this idea that there is not a trace of any desire to secure social justice, a real equality of the people, not merely paper equality, but equality in actual fact, in daily living and experience, which we were promised and we had all hoped would be the result after the Imperialist exploiter was ousted from the country. As I read two or three most prominent chapters or articles I feel a glaring lack of any attention being given to the disinherited, to the dispossessed, to those who have not scope to have the minimum, what I may call, a decent standard of civilized existence in this country.

Take the chapter of Fundamental Rights. For example, we were told and with some force that the Fundamental Rights have been added to and modified by a number of exceptions, but that these exceptions do not take away the right. I for one feel that the exceptions are too many. As I said before we have given the instructions or the principles have been laid down for drafting this Constitution in a moment of tension, in a moment when our minds were terribly disturbed so that attention was paid only to the dangers in an emergency rather than a more normal, more permanent, more usual form of life or standard of life which we were hoping for.

In the various items of the Fundamental Rights which will come up for detailed discussion later on I shall have, I hope, an opportunity to suggest amendments and redress the omission or correct the distortion this Draft suffers from on this most important subject.

But there is one aspect of it which I wish even at this moment to place before the House. The Rights are throughout spoken of only as "Rights"; and there is not a word said about Obligations. I would put it to the House that we are living and thinking as individuals or as a community too much of Rights and forgetting our Obligations whether as citizens, or as communities, or as a State. I for one would like to emphasize the chapter of Obligations of the State to the individual and *vice versa* as much, if not more, as that of rights.

The Rights, if I may say so, indicate extreme individualism, an exclusionist or exclusivist tendency, in which the individual emphasises his exclusive claims or possession of privileges or possibilities far more than that of his membership of a group or of a society, or of a community; whereas a similar emphasis on Obligations would teach him that he is not living in an isolated compartment by himself, he is not living in a Robinson Crusoe island, but that he is a member of a cooperative society, of a mutually interdependent community, of a state in which the only guarantee for survival, the only chance of progressive advancement is a co-operative effort, in which individual rights have to be subordinated, the individual demands have to be subordinated to the co-operative necessity of joint effort for a common or agreed end. Sir, we are living in an age when we think so much of freedom; and talk in terms of individual liberty so much that we are apt to forget that "freedom" is likely to degenerate into "licence" if we do not take care to remember the need simultaneously for self-discipline that freedom has its obligations just as much as its advantages. This would be a self-imposed restriction like any kind of discipline that one can think of.

Here again is a case in which in regard to not only individuals, but also communities the provinces and the whole Union, I should like to emphasise the Obligations chapter as much as, if not more than, the chapter of Rights. The individual has his rights, and I for one shall never agree to any suggestion of any infraction of those rights. But, at the same time the individual as well as the society have mutual obligations; and unless these obligations are duly stressed, I fear the apprehensions of many of us, about the likely consequences of the unrest of our time, will not be lulled to rest.

[Prof. K. T. Shah]

In this connection, I would like to add another idea which I would beg the House to consder more at length later on. We are talking about "Democracy" almost as a fetish. I know I am using some unpopular language when I speak in this strain. But please remember that "democracy", to be successful, has to be qualitative as much as quantitative. You must remember that what should count ought not to be merely the number of hands that are raised or the number of heads, present, but the character of those hands or the content of those heads.

In the Constitution before us, this qualitative aspect of democracy is, I am afraid, very much over-looked, if it is at all there, whereas the quantitative aspect figures almost in every chapter, and if I may say so, almost in every word of this Constitution. I could give a number of illustrations straight off of the way in which the wordings express more the quantitative side of democracy, more the number, more the numerical strength, and not the moral force, the spiritual backing, the intrinsic value that a sound democracy should have.

I am afraid this is an idea not very popular at the moment, not very fashionable. But it is an idea which I wish the House would at least bear in mind before adopting the several clauses of the constitution. They embody a view, which, I am afraid, has already become obsolete. We were told the other day that there is nothing new in this constitution. The Law Minister was good enough to say that in matters like this, there can be nothing new. But here is a suggestion: why should we not begin, if I may say so, emphasising what I call the qualitative side of democracy of the new India as much as we have so far been talking of territorial or quantitative democracy?

In the chapter relating to the distribution of financial resources and obligations, to which allusion was made this morning, in the chapter relating to the distribution of powers between the provinces or the units and the Union, in the question of the emergency powers, and so on, always there is a hint, behind the scenes so to say, there seems to be a conflict even in the minds of the draftsmen, between what is demanded in the interests of the integrity, independence and security of the new State and also by the freer life, nobler living, and wider oppoftunity for the individuals that make up this nation.

I am not inclined, Sir, to invite a repetition of your bell though I have a lot more to say. Even if you are gracious enough to extend the time, I would not be able to say it within this time limit. I would, therefore, reserve what I have to say to the time when the amendments come up for discussion. Thank you.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, I would be failing in my duty if I do not at the very outset congratulate my Honourable friend and old colleague, Dr. Ambedkar, for the magnificent performance he made yesterday. The House appreciates the stupendous amount of time and energy he has spent in giving the constitutional proposals a definite shape. In the few minutes at my disposal, I propose to discuss some of the most striking points in this Draft Constitution, and before I plunge myself headlong into the provisions, I would request my honourable friends Dr. Ambedkar and Sir Gopalaswami Ayyangar to listen to me for a few minutes with attention.

The first thing to which I would like to draw the attention of my honourable friend, Dr. Ambedkar, is the description he has given of India as a Union of States. I take particular objection to the expression States; for, "States" in political parlance, in the constitutional literature of the world, has got a certain special connotation. Unfortunately, the expression States has been used in this Draft Constitution in many places for a variety of purposes and in different senses likely to create confusion. If the word States is retained in the description of India as it is, the impression may be caused in future that these States are independent sovereign States, joined to the Centre by some

sort of a voluntary association. Students of constitutional history know what happened in the United States of America. There, some of the States, under the advice of some of the eminent jurists of the time, formed the States' Rights School and seriously contended that the States had each of them real sovereign and independent status and that it was by sheer voluntary association that they formed into a federation and worked together. I want this to be guarded against. We had before the transferance of power a body of territories known as Native States. Many of them have acceded to the Indian Union. If this description of India, as is given in Articles 1 and 2, is retained, these States may contend, at some later stage, that they were sovereign States and were united to the Indian Union by purely voluntary arrangement. We want to make it perfectly clear in the constitution that this Union is an indissoluble Union of indestructible States, States in the sense of constituent units. If I try to develop this point further, I will take more of the time of the House. We have got to find a suitable expression. We could use the word Provinces in the case of Governors' Provinces, and in the case of the Native States, "principalities" or expressions like that. If, Ajmer-Merwara, Coorg or even Delhi were to be dignified by the name of State, it would be descending really to the region of the ridiculous.

The next point to which I want to draw the attention of the House, is the discretionary power given to the Governors in the Constitution. The House knows very well that according to the Government of India Act of 1935, the Governor had certain special powers to be exercised by him in his discretion or in his individual judgment. This caused a lot of friction between the provincial Ministers and the Governors,—some of the Premiers are sitting here in front of me and I see them nod in assent of what I say—that this had been really a source of discontent among the popular ministers in the country. After the 15th of August, 1947, we made a clean sweep of these provisions. It is now provided that "there shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions", removing completely all the discretionary powers which the Governors used to enjoy under the Government of India Act of 1935, untill the 15th of August 1947. Curiously enough I find that in this Constitution these noxious provisions have been bodily incorporated in Article 143 (i) and (ii). Here in this Constitution we have again provided for discretionary powers of the Governor but I ask the House very seriously to consider whether it really means progress or regress, advance or reaction. To day the Constitution of the country provides that the Governor or Governor-General of this country shall function merely as the Constitutional head and nothing more. To-morrow if this Constitution, as it is, comes into operation with Section 143 (i) and (ii), the Governor will be more than a constitutional head as he will have certain discretionary powers. There is another point to which I would like to draw the attention of the House. In the Government of India Act of 1935 there was in Section 54 a salutary check that whenever the Governor was to function in his discretion or in the exercise of individual judgment, he was to be under the superintendence, guidance and control of the Governor-General. This is entirely absent in the present case. Therefore this demands serious consideration.

My third point is regarding the provision for a very strong Centre. An Honourable Member speaking before me was making a grievance that the Centre was being made over-strong. Yes, we want a strong Centre by all means, if we want to preserve or maintain our new-born freedom, and if we want the solidarity of this country. (*Hear, hear*). We have had enough experience of Provincial Autonomy of which we had been enamoured in the past and now we have seen its effects. We have seen the centrifugal and fissiparous tendencies that it has generated and we all know it to our cost. If we want to hold together all the component units there must be a Centre which would be able to bring them into cohesion, and that Centre must have ample powers for the purpose. This does not mean that provincial autonomy should be ruthlessly curtailed.

[Pandit Lakshmi Kanta Maitra]

My next point is regarding reservation of seats for minorities. I have a strong feeling about it. Reservation of seats to-day has absolutely no meaning (*Cheers*). Reservation of seats for Muslims can have absolutely no justification. After having divided the country on the basis of two-nation theory with all its implications, after having provided in the Constitution Fundamental Rights some of which are justiciable, after having provided in the Constitution Directive Principles of Governance, after having provided in the Constitution for adult suffrage, after having done all this, does anyone feel called upon to provide for any reservation? In principle I am opposed to it. Let my Muslim friends not misunderstand me. They have got this country divided and we know to our cost what that division has meant. Punjab has understood it, and Bengal has realised it. Therefore, those of you who are super-secular minded, by all means, give all manner of special representations to whomsoever you please but so far as the province of West Bengal and East Punjab are concerned, I beseech you to take your hands off. In the last session of the Constituent Assembly, I got a motion passed that so far as reservation for minorities etc., is concerned, exception must be made in the case of West Bengal and East Punjab; the House accepted it.

Prof. N. G. Ranga (Madras: General): We do not want reservation.

Pandit Lakshmi Kanta Maitra: Mr. Vice-President of this august Assembly represents the Indian Christian Community in India. He is a man of great eminence and standing and he has been president, for three successive terms, of the Indian Christian Association. This Christian community under his able guidance and leadership has never claimed any special representation. And if there is any community in India which can legitimately claim special representation, it is the Indian Christian Community. He has set an example and I hope the leaders of the rest of the communities would emulate his example. We are trying to weld all Indians into a common nationhood. Whatever is left in India after division, is one nation and it will be the endeavour of Constitutionalists, public-men and the Government to work up to this ideal that we are all one nation.

Next, I want to insist that we should have in every province a bi-cameral legislature. You are giving adult-suffrage and you do not know how big your legislatures would be and you do not know what kind of people you will have. We want a revising Chamber as a check or brake on hasty legislation. That has been a very salutary practice which obtains in England and so far as I am concerned, I have not the slightest doubt that you must have bi-cameral legislatures in every province for another two decades at least. In any case I, do declare here that we in Bengal want a bi-cameral legislature, an upper House.

Next, the successful operation of this constitution hinges on a very important matter and that is the financial adjustments between the provinces and the Centre. Unless you provide here and now in the body of the Constitution itself the basis on which allocation between the Centre and the Provinces would be made, I am afraid the new constitutional machinery would begin functioning at great disadvantage. The provinces or the component units will not know how to proceed with their development plans or Nation-building projects unless they are told in the Constitution itself their respective shares in the revenues of the Centre. I would therefore suggest that a Committee of impartial financial experts should be appointed to advise the Central Government, after exploring the entire field of taxation, the allocation to be made to the different provinces out of the revenues that are derived from the provinces on behalf of the Centre and other sources of taxation.

Lastly, I think I should make a passing reference to the controversy which has unfortunately been raised in this House over the question of State language. The protagonists of Hindi, in their enthusiasm, have gone too far. As a reaction two or three of my friends have already spoken against it somewhat bitterly. I

wish that this matter had not been raised at this stage. I can assure my friends from Northern India, that if we cannot speak Hindi to-day, it is simply because we happen to be born in the Eastern or Southern parts. It is a mere accident of birth and individual merit or demerit has absolutely nothing to do with it. We will try to see how far we can go with you. We want some national language for India (*Cheers*) but it is no use repeating *ad nauseum* the new dictum that independence will be meaningless if we all do not start talking in Hindi or conducting official business in Hindi from to-morrow. It is both ridiculous and absurd. However, at some later stage we must solve this problem. I can assure my Honourable friends from the north that we have got every sympathy for Hindi, but let them not in their overzealousness mar their own case. This is a sort of fanaticism,—this is linguistic fanaticism, which, if allowed to grow and develop, will ultimately defeat the very object they have in view. I, therefore, appeal to them for a little patience and forbearance towards those who for the time being cannot speak the language of the north. After all they also humbly claim that their own languages contain literary wealth and treasure which they cannot all throw away at the mere bidding of the North.

Shri Ramnarayan Singh (Bihar: General): Sir, I congratulate my Honourable friend Dr. Ambedkar on the opportunity he got of introducing this Constitution Bill and I support his motion. As political workers we always talked of Swaraj which means that power will go from the British direct to the people in the villages. But I do not think this proposed constitution will give that power to them. As before, once in five or seven years they will give their votes and their power will end there; later on, they will be governed as in British days. What we all want is that the political organisations in the country should serve the people; we do not want to be governed as before. We do not want Governors and even Ministers. The political and other organisations should think how best to serve the people of the country. As regards the powers of the President and Ministers, my Honourable friend Dr. Ambedkar has very well appreciated this parliamentary system. He was not ashamed to admit that many things have been borrowed from other constitutions. It is of course a fact that beggars and borrowers do not feel ashamed of what they do, but those who do not want it feel the pangs of it. This constitution will only indicate to the outside world that we have no originality and only borrow from the constitutions of other countries. I say emphatically that the constitution is not what is wanted by the country.

Dr. Ambedkar said in an appreciative mood that it is a parliamentary system of Government. If that is so, I am sure it will develop surely into the party system of Government which has been a failure in the west. I appeal to the House to consider this very seriously. There are people who say that the party system is based on democracy; on the other hand many jurists and politicians feel—and I also feel—that there is no democracy in it; on the other hand it strikes at the very root of democracy. Democracy means rule by the majority, which must consists of free and independent votes. But what we find is that our votes are influenced by a few people. And once the votes are influenced there is no democracy. I therefore say that this parliamentary system of government must go out of this; it has failed in the west and it will create hell in this country. I have a bitter experience of its working in the provinces. In the Presidential system of government it is easy to find one honest President, but it is not so easy to find an army of honest ministers and deputy ministers and parliamentary secretaries, and so on. So long as this thing is there, there can be no justice. Of course we can provide for the removal of the President if he goes wrong, but I think both in the Centre and in the provinces we must have all-powerful Presidents who will be responsible for the work done and who will choose their ministers or secretaries. With regard to these people I am inclined to say that it is better to be ruled by devils than by an army of ministers and secretaries, etc. I

[Shri Ramnarayan Singh]

want power to go direct to the villages. It is not enough that they should vote; they must be made to take an interest in day to day administration of the country. Besides, everybody knows that in a good State the three functions of judicial, legislative and executive are independent. But in these days under the parliamentary system of Government people form parties and manipulate votes and get a majority in the Legislatures and form the government. This is dangerous. We find to our cost that these people wish to please their relatives and party men. Therefore I suggest that the parliamentary system should go and the three branches—executive, judicial and legislative—should have nothing to do with one another.

As regards language and protection of cows I agree with what my friend Seth Govind Das said. The economy of the country demands that the question of cow protection should form one of the items of the Fundamental Rights which should also include the right to bear arms.

As regards reservation of seats I feel it should not be allowed. All my friends know that I have never been communal-minded. But, as Pandit Maitra said, when the country was divided on a communal basis, there should not be any reservation for the Muslims. At the same time I am not one of those who say that all Muslims should be sent to Pakistan or should be harassed in the Indian Union in any way or that their rights should be less than mine. They should have the same rights and privileges here as others but there should be no talk of reservation for them. To provide for reservations for any community would do great harm to the country. In conclusion I appeal to the House and to the country outside to frame the constitution in such a way that power may go to the purest and the best of our countrymen and that those who wield power may serve the people and make them happy and prosperous.

Dr. P. S. Deshmukh (C. P. & Berar: General): Sir, I am thankful to you for giving me this opportunity to express my views on the proposed constitution. The time is limited and therefore my observations can only be of a very general nature. When consideration of the various clauses takes place I shall unfortunately not be present here. I am therefore all the more grateful to have these few minutes.

The speech delivered by my Honourable friend Dr. Ambedkar was an excellent performance and it was an impressive commentary on the Draft that has been presented. As is well known, he is an advocate of repute and I think he ably argued what was before him. He would perhaps have shaped the constitution differently if he had the scope to do so. In any case I think he admitted his difficulties fully when he said that after all you cannot alter the administration in a day. And if the present constitution can be described in a nutshell it is one intended to fit in with the present administration. That is why there is nothing original and nothing striking, nothing to create any enthusiasm about it. It is to fit in with the administration left by the British in this country. The Governors of provinces are to be there; the administration in the provinces is not to be disturbed. What has been disturbed is only a few names here and there. We are told that there will be a President of the Indian Republic. As the learned Doctor himself admitted, he has been metamorphosed into a pitiable figurehead like the present King of England. So the name of President is merely a misnomer. It is to be adopted because we have perhaps no other alternative and because we are not prepared to call the head of our executive by the name of king. Apart from that and apart from the enumeration of Fundamental Rights, we do not find any striking difference between this constitution and the Government of India Act of 1935. Elaborated in the way in which it was done by my learned friend it looks perhaps more attractive; but on an ultimate analysis it will be found to be the same as the Act of 1935 with a few changes here and there.

With regard to the Fundamental Rights my Honourable friend had to admit that they have not tended to remain as fundamental as they should have been expected to. What is being done by the Supreme Court of America is tried to be done by provisos in the Draft Constitution. The various Fundamental Rights embodied in the American constitution were interpreted by the Supreme Court of America from time to time, and in their interpretation there were certain clogs placed on the fundamental nature of the Fundamental Rights, provided for in the American Constitution. That is what we do here by way of provisos. I for one do not like the fundamental rights at all because those which are necessary are already there in the Act of 1935, without the pompons name of Fundamental Rights. For instance, freedom of speech and freedom to associate freely although these rights had to be trampled under feet on various occasions during the Congress movement. The Fundamental Rights which are provided in the present constitution should not either have been circumscribed as they are or their enumeration should have been avoided to a large extent. Because some at least of them are bound to prove a clog, an obstacle to our future progress. For instance freedom to acquire or sell property and to dwell anywhere one likes. I think it takes away from the sovereignty of the parliament. If this is going to be the state of our Fundamental Rights provided for in the Draft Constitution based on the parliamentary system of government, these rights should have much rather been permitted to be determinded from day to day by the Parliament itself. Why should we take away or encroach on the sovereignty of Parliament by defining the rights which we are not prepared to concede on any broad basis? We have hedged in the Fundamental Rights with so many restrictions that they are neither Fundamental nor have much of rights in them. In some respects at least they constitute an enumeration without much significance.

The Honourable Dr. Ambedkar was at pains to justify the inclusion of the directive principles of administration in the body of the Constitution. He was constrained to admit that if he had the choice he would have relegated them to the Schedules in the Constitution. That I think is a very clear and explicit admission on his part. Really speaking there is no place for them in the Constitution. It is a sort of an election manifesto. Moreover, the directive principles themselves are not of a very fundamental nature. I could have understood it if it was provided that it shall be the duty of the State to establish the right of the state to the ownership of all mineral resources, that all industries shall be the property of the nation, that the Government derives all its authority from the people, that no person shall be permitted to be exploited by another etc. If there was something fundamental like that, there would have been more use. It is no use to put them in the Instrument of Instructions also as suggested by Dr. Ambedkar. They should not have in any case found a place in the Constitution itself.

Then my friend tried to tell us that the Constitution was more unitary than federal. My opinion frankly is that the present Constitution is neither unitary nor federal. That being so, this is nothing better than the 1935 Act. It is not unitary because provincial autonomy of a sort will continue; it is not federal because there is no freedom allowed to any of the units to any substantial degree. So I think this is a hotch-potch of the provisions taken from several different constitutions and my friend has been hard put to it to make a consistent whole out of it. Of course, as an advocate he has justified every provision in it. This Constitution will in all probability go through the House without much change. I think we are destined to have this Constitution and no other. But, in spite of that, I should like to say that we should have a Constitution about which every individual in the country would feel enthusiastic.

Sir, after all this is a country of agriculturists. The peasants and the labourers should have a larger share and the most dominating in the Government. They should have been made to feel that they are the real master of

[Dr. P. S. Deshmukh]

this the biggest nation on earth. I do not share the view that the past or our ancient civilization is not worth utilising for the future building up of the Indian nation. That is a view from which I differ. I have offered these few comments, within the time at my disposal. I do not think that this House would be in a position to alter the Constitution largely.

Here I may refer to the feeling of some people that we have got into the Constituent Assembly and want to drag on remaining in office by some means or the other. Though that feeling is there, we have to make the best of the situation; we must try to remove it and improve it as much as possible. That is all that is possible in the present circumstances.

I hope the Honourable Doctor, although he has not been able to frame a Constitution more akin to the genius of the Indian people, will be accommodating in the matter of the amendments intended to make the ordinary citizen feel more enthusiasm and the peasant and the labourer feel that his Raj and his kingdom is going to dawn. That was the Ashirwad that Mahatma Gandhi gave him.

Shri S. Nagappa: Mr. Vice-President, Sir, I join the previous speakers in congratulating the Honourable Chairman of the Drafting Committee and all members of it. They have taken care to see that all aspects of all problems and all the reports of the various committees have been consolidated and looked into.

Now, as regards the labour problem, which my friend Shri T. T. Krishnamachari was kind enough to bring to our notice, it is a fact that we have been finding that in various provinces different measures to deal with labour are going forward. It would have been better if Labour therefore had been in the Central list. That would help to solve all the problems agitating labour.

Sir, I am one of those who plead for a strong Centre, especially as we all know that we have won our freedom very recently. We require sufficient time to consolidate it and to retain it for all time to come. For another reason also the Centre has to be strong. We have been already divided in so many respects, communally and on religious grounds. Now let us not be divided on the basis of provinces. So, in order to unite all the provinces and to bring about more unity, it is in the country's interests as a whole to have a strong Centre.

Another reason why we should have a strong Centre I will mention presently. Some people say that we should have a strong Centre with a war mentality. I do not think we should have that mentality at all. We have been trained to be non-violent and truthful. These are our principles. When that is the case, there is no likelihood of the Centre having war mentality.

The Honourable Dr. Ambedkar, in introducing his report and the Draft Constitution, mentioned that that the Constitution was federal in structure but unitary in character. I believe, Sir, especially at this stage we require such a Constitution. We were told that he has borrowed from the Government of India Act. When we find something good in it, we copy it. If we find something useful and suitable to us, to our custom and to our culture, in other constitutions, there is no harm in adopting it.

The minorities have been very well provided for in the Constitution. I am glad about it and the representatives who have been returned to this House to safeguard the interests of the minorities are also glad about it. For this we have to congratulate the majority community. We have to congratulate the majority community for conceding certain special privileges to the minorities.

Questions were raised here whether it is necessary for the minorities to have reservation. I think it may not be necessary for all time to come and for all the minorities. There are certain minorities which require some safeguards. I do not want these safeguards to be continued for all time to come. It depends more on the majorities how the minorities are made to merge with

the majorities. It is not for the minorities to claim any reservation and to be always secluded or separated. The minorities are more eager than the majorities to get themselves merged at the earliest possible moment, but the task lies not on the minorities but on the majorities. The majority must conduct itself in such a way that the minorities feel that they are not different from the majority. It is only then, Sir, that we will be in a position to do away with the minority problem. Anyhow, I am thankful to the majority for having gone such a long way. As my Honourable friend, Mr. Frank Anthony, was saying this morning, the minorities have gone more than half the distance to meet the majority. Sir, there is some point in having reservation at least for some time to come. I only want to emphasise that it is the duty of the majority to see that the minorities do not feel that they are minorities.

I am glad, Sir, that social problems have also been touched. In the Constitution it has been made an offence to practice untouchability in any form. I am glad that the Drafting Committee has taken care to see that this is incorporated in the Constitution.

Sir, with regard to the services also, the Committee has made provision for the adequate representation of minorities. But there is one omission which I want to bring to the notice of the House. Nothing has been said that, when the leader of a party forms a government, his government should be so formed as to reflect all shades of opinion and all classes of people. If such a provision is included, it will go a long way in solving the minority problem. I am thankful to the Drafting Committee for having conceded most of the points of these minorities. If the Drafting Committee had taken care to include such a provision as I have mentioned regarding the formation of Cabinets, both provincial and Central, they could have solved the minority problem completely. The House can easily imagine as to what will happen if this matter is left to the sweet-will and pleasure of the Premier whether to select a member of the minority communities or not. The Premier may say that in his Party there is no member belonging to the minority communities and that therefore he need not include any member in his Cabinet from outside his Party. In order to see that the minorities get a share in the administration of the country, it would have been better if the Drafting Committee had made a provision stipulating due-representation of the minorities in the Cabinets, both Provincial and Central.

As regards the language problem, it has been touched on by my Honourable friend coming from Southern India. I feel that my Honourable friends from Northern India are taking undue advantage of the fact that they have learnt Hindi from birth. That should not be the reason why these friends want to force Hindi on the people of Southern India. This does not mean that we are not for this language. We are not fond of English or any other foreign language. We are fond of our own language Hindi but that must take its own time. Even a child, when sent to school, takes its own time to study. Why are you in such a hurry? I do not think you have got to catch a bus or anything. I would like to assure my friends from Northern India that we are for one language for the country, whether it is Hindi or any other language decided by this House. But you should not try to force it on us all of a sudden and see that we are kept in the dark thereby. This must take time till all the people in this country become accustomed to it.

Sir, I once again thank the Honourable Dr. Ambedkar for having taken the trouble of drafting this Constitution. No doubt, it is an elaborate task but he has done it so successfully and in such a short time.

Mr. Vice-President: The House stands adjourned till Ten of the Clock to-morrow morning.

The Assembly then adjourned till Ten of the Clock on Saturday, the 6th November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 6th November 1948

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

MOTION *RE* DRAFT CONSTITUTION—(contd.)

Shri Arun Chandra Guha (West Bengal: General): Mr. Vice-President, Sir, we are assembled here to give final touch to the first Constitution of Free India. It is a very significant moment of our life and in this moment I cannot but recollect the past, the years of trouble and struggle that we have passed through. We have lost many comrades; the whole nation has undergone many troubles and sacrifices. When we are assembled here to give shape to our future destiny and our future constitution, I must bow down to the memories of those who have left us in the course of the long years of struggle that we have passed through,—Surendranath Banerjea, Lajpat Rai, Motilal Nehru, Deshbandhu Chittaranjan, and many others who have led us in the struggle and last by Mahatma Gandhi the Father of the Nation. And in our intimate circle, particularly in Bengal, we have also our friends who have led us through all the struggle, less known to the public, but not less devoted to the cause, not less honest and sincere in their ardent desire for freeing the country. Coming as I do from the circle of workers who have been through the struggle for more than four decades, Sir, I cannot but recollect at least the names of some—Jatindra Nath Mookerji, Swamy Prajnananda Saraswati, Surya Sen. Bhagat Singh and others. They have also served the cause, though they are not so widely known—they have also contributed to the cause.

Now to the Draft Constitution. I am afraid the Drafting Committee has gone beyond the terms. I am afraid the whole constitution that has been laid before us has gone beyond the main principles laid down by the Constituent Assembly. In the whole Draft Constitution we see no trace of Congress outlook, no trace of Gandhian social and political outlook. The learned Dr. Ambedkar in his long and learned speech has found no occasion to refer to Gandhiji or to the Congress. It is not surprising, because I feel the whole Constitution lacks in Congress ideal and Congress ideology particularly. When we are going to frame a constitution, it is not only a political structure that we are going to frame; it is not only an administrative machinery that we are going to set up; it is a machinery for the social and economic future of the nation.

I feel, as for the economic side, the Draft Constitution is almost silent. It is rather anxious to safeguard the sanctity of property; it is rather anxious to safeguard the rights of those who have got something and it is silent about those who are dispossessed and who have got nothing. While there is much about the sanctity of property and the inviolability of property, things such as right to work, right to means of livelihood and right to leisure etc., have been left out and these things should have been effectively incorporated, in the Constitution.

[Shri Arun Chandra Guha]

As for the Fundamental Rights, Dr. Ambedkar,—he is a learned professor and I acknowledge his learning and his ability and I think the Draft Constitution is mainly his handicraft—in his introductory speech, he has entered into a sort of metaphysical debate. He has introduced a new term; I feel, Sir, there is no right in the world which is absolute. Every right carries with it some obligation; without obligation there cannot be any right. So it is no use taking shelter behind the plea that the Fundamental Rights cannot be absolute. I know these must be relative; but that does not mean that the Fundamental Rights should be negatived by putting some provisos. All the rights that have been mentioned in the Fundamental Rights section have immediately been negatived by putting some provisos and some subsidiary clauses. It would have been better for the Drafting Committee not to have provided these provisos within the Constitution at all. Then the future Government would have been able to act freely in framing the Fundamental Rights. But now as these have been incorporated within the Constitution it would be a question of amending the Constitution to make it broad-based. So I would ask the House either to put the Fundamental Rights rather frankly or to omit the whole chapter from the Constitution so that the future Government may frame the Fundamental Rights according to the needs of the time and not be handicapped with the task of amending the Constitution which has put some difficulties in the way.

Then, Sir, Dr. Ambedkar has passed some remarks about the village units. We have been in the Congress for years. We have been taught to think of the village panchayats as the future basis of administrative machinery. The Gandhian and the Congress outlook has been that the future constitution of India would be a pyramidal structure and its basis would be the village panchayats. According to Dr. Ambedkar, the villages have been the ruination of India, the villages have been the den of ignorance. If that has been the case now, that is due to us who have been living in the towns, who have been shining under the foreign bureaucracy and foreign rule. Our villages have been starved; our villages have been strangled deliberately by the foreign Government; and the towns-people have played a willing tool in this ignoble task. Resuscitating of the villages, I think, should be the first task of the future free India. I have told you, Sir, that we have been taught according to the Gandhian outlook and the Congress outlook that the future constitution of India would be a pyramidal structure based on the village panchayats.

I admit we require a strong Centre; but that does not mean that its limbs should be weak. We cannot have a strong Centre without strong limbs. If we can build the whole structure on the village panchayats, on the willing co-operation of the people, then I feel the Centre would automatically become strong. I yet request the House that it may incorporate some clauses so that village panchayats may be allowed to play some effective part in the future administration of the country.

Dr. Ambedkar has posed before us a question that they have tried to put the constitution on the basis of provinces, on the basis of some political units, on the basis of the individual as the basic unit. The village should be the real basis of the machinery. The individual is the soul of the whole constitution; but the village should be made the basis of the machinery of its administration.

Then, Sir, I would like to say something about the language. In the Draft Constitution it has been stated that Hindi and English should be freely used in this House, and other languages can be used only when the speaker is unable to express himself adequately in either of these languages. I feel, Sir, as in the Soviet Constitution, we should allow the eight or nine major languages of India to be freely used in this House. As in the Soviet Constitution, by sheer weight of number the Russian language has all the predominance, here also, Hindi would have all the predominance by the sheer weight of number.

There is no shred of doubt in the mind of any of us that Hindi is destined to be the national language and the language of the State in India; yet that should not mean that other languages which have mighty literature, mighty traditions behind them should not be allowed to be spoken in this House without the speaker declaring himself to be unable to express himself in Hindi or English. I would request that other languages should be allowed to be freely used in this House.

Mr. Vice-President (Dr. H. C. Mookherjee): Before I call upon the next member to address the House, I have here forty slips of members who wish to speak. The matter is so urgent and so important that I should like everybody to have an opportunity of airing his views on the Draft Constitution. May I therefore appeal to the speakers not to exceed the time limit which I have fixed as ten minutes?

Shri T. Prakasam: (Madras: General): Sir, the Draft Constitution introduced by Dr. Ambedkar, the Honourable Member in charge, is a very big document. The trouble taken by him and those who are associated with him must have been really very great. My Honourable friend Mr. T. T. Krishnamachari when he was speaking explained the handicap under which the Honourable Dr. Ambedkar had been labouring on account of as many as five or six members of the Committee having dropped out and their places not having been filled up. I have been attending this session regularly with the hope and expectation that the Constitution that would be evolved would be one that would meet with the wishes and desires of those who had fought the battle of freedom for thirty years, and who had succeeded in securing freedom under the leadership of the departed Mahatma Gandhi. I was hoping, Sir, having seen the Preamble, that everything would follow in regular course and bring out a Constitution that will give food and cloth to the millions of our people and also give education and protection to all the people of the land. But, Sir, to the utter disappointment of myself and some of us who think with me, this Draft Constitution has drifted from point to point until at last it has become very difficult for us to understand where we are, where the country is, where the people are, what is it that they are going to derive out of this Constitution when it is put on the statute book. Now, Sir, when a Constitution is drafted, generally, what is expected of those who are in charge of drafting the Constitution, those who are in charge of approving the constitution as members of the Constituent Assembly is, what are the conditions in the country, what is the situation in the country, are we doing all that is necessary to get over the troubles in the country? With that object, I have been waiting to learn from all Members who have been devoting their time in explaining the real position with regard to this Constitution. I feel thankful to some of those members who have not forgotten the way in which the battle of freedom had been fought in this country and how freedom had been secured. So far as the drafting of this Constitution is concerned, with all respect to the Honourable Dr. Ambedkar, I must say that he has not been able to put himself in the position of those who had been fighting for the freedom of this country for thirty long years. In one stroke he condemned the village panchayat system. He has referred to the remarks of one great man of those old days of the British, Mr. Metcalfe, and the description given by him that the village panchayats existed and continued, whatever may have been happening with regard to the Government at the top; whoever may have come and whoever may have gone, they did not concern themselves. It is not a matter which should have been treated by Dr. Ambedkar in that manner. That was a condition to which we had been reduced, after the village panchayats had been exhausted on account of the oppression of the various foreign rulers who had come over to this country. Still in spite of all that had been done for their suppression, they had survived. That is what Metcalfe wanted to explain to the word and to us who have been ignoring it. Therefore village panchayat

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is not to be condemned on that basis. I do not advocate for one moment today that village panchayat should be such as described by Metcalfe under those circumstances. Village panchayat should be one which is up-to-date, which gives real power to rule and to get money and expend it, in the hands of the villagers. I would like to know what is this Government that is being constituted under this Draft Constitution. For whose benefit is this intended? Is it for the benefit of a few people or is it for the benefit of the millions of people who pay taxes? Whether they have power or not they pay the taxes under the vicious system that had been established in this country and under which we had been groaning for a hundred and fifty years and we tried our best to get rid of that system. The British built up a system in the Centre and in the provinces in such a manner that the tiller of the soil and the labourer and other people are made to pay some tax or other to enable this Government to carry on administration from the Fort St. George or some other Fort and from this Delhi Centre or other places. What becomes of those millions who pay the taxes? The money is taken away under the British system by those people who have been established here step by step and the money is brought here and spent. How the money is spent the tax payer does not know and the tax payer has been left in the lurch. He does not know whether there is any ruler at all, even after the establishment of freedom by us, because we are perpetuating the same system and we are supposed to be governing in the name of King George. The Governor-General is appointed by the British Cabinet and our currency notes are being printed with the head of King George. To-day, after two years of establishment of freedom, we are in that condition. Therefore, it is only right and proper that this Constituent Assembly which has been sent by the people of this country should take particular care to see that this Draft Constitution of Dr. Ambedkar is so amended that it would really become a constitution for the benefit of the masses and the millions of people for whose sake the battles have been fought by that great friend who has gone away leaving us here to get along with our work. When he was alive his system and his schemes were not supported by us wholeheartedly or by the millions in the country. If that had been done, as he said, within twelve months we would have established freedom. That man of vision was with us and with all the betrayal made by us, he managed to educate us and keep us calm and fought all the battles until he succeeded and gave us a scheme for the construction of the future Government. Having been the man who roused the millions of people who had been in ignorance at the bottom when he came here and lifted them up, he made them understand that 'you are all men having soul force in the same manner in which I have got. If you educate yourself and carry on my programme, you will carry out everything and you will establish freedom.' I myself, Sir, had a talk with the great Lala Lajpat Rai more than forty five years ago in England. He was the earliest of the sufferers for freedom and he said: "Look at the organization and discipline and the way in which people here conduct themselves. Can we ever hope to send away these British people from our country and establish freedom?" That was my feeling when I touched that shore. Under those circumstances it was, that this man Gandhiji came as a Seer and lifted us up and I and many friends here entered into his movement and we had been struggling on all these thirty years. The real thing has not been established. The British system drowned us and suppressed the country and made the people utterly helpless. To get rid of the capitalist system he introduced what was called the constructive programme to enable every man and woman to do his or her duty and then make themselves fit for making sacrifices and finally to send away the British. He succeeded and the people succeeded. The people must be thanked for the readiness with which they flung themselves into any ordeal whether it was one of fire or one of water. Instead of having a Constitution based on a socialist basis in the manner in which Gandhiji had

formulated for thirty long years, he divided the whole country into linguistic areas and framed the Constitution for the Congress and worked that for thirty years and it is on account of that that we won the freedom—that socialist basis has all been thrown off and a capitalist basis is being introduced. That will be the result of this Constitution. To-day we are in the throes of a famine for food and cloth and I would ask Dr. Ambedkar whether this Constitution would solve any of these problems. To my mind it is not possible so long as the capitalist system of the world is kept up. You may pass so many resolutions and appoint so many committees to solve the inflation problem, but have not been able to reach that point. Therefore it is necessary that this Constitution must be amended in such a manner that the capitalist monetary system is not adopted but a more proper socialist system of our own—I don't mean to say the Russian, we had our own system and we have had our system which had been put into force by Mahatma Gandhi and worked for thirty years successfully. This type of Draft Constitution is beyond my comprehension and I would appeal earnestly to Dr. Ambedkar—I do not blame him alone. Dr. Ambedkar has not been in the battle-field for thirty years. He had not in any way understood the significance of this. He had been attacking the whole system and the programme of Gandhi and the Congress all his life-time.....

Mr. Vice-President: Order, order.

Shri T. Prakasam: If I should not say so much—I do not know—I will obey your order. The Draft Constitution has gone in a wrong direction and it requires amendment very badly. I may tell the Honourable Members of this House and you, Sir, that if this is allowed to go on in the same manner, if the same capitalistic monetary system is adopted here, we must remember what happended to other countries. The monetary system adopted by the capitalist countries of the world had proved a failure not once but twice. After the first war you have all seen what was called the world's first economic distress. Germany had become bankrupt. England had become very nearly bankrupt. Her pound became equivalent only to seven shillings in the foreign market. But for the gold that was exported from here by the kind friends of our own mercantile leaders here, the capitalists, England also would have become completely bankrupt. That is the first thing. Then the second economic distress came upon the world. You will all remember what Dalton, the British Chancellor of the Exchequer said. He said that under the changed conditions the loss sustained by Britain on account of the dollar exchange business was 13 million dollars every day. And the whole system was going to collapse. If that had not been prevented by this Marshall Aid system they would have been perhaps in a worst position. Today England is suffering that way. I therefore warn Honourable Members of this House not to plunge this country into such an economic condition by adopting this Draft Constitution without making necessary changes when the amendment stage comes. I have been waiting to see whether any light would come—whether any day would come with regard to these things. Sometimes I put myself in communication with the Finance Minister, who is not to be found here, with regard to the monetary system that should be adopted. (At this stage Mr. Vice-President again rang the bell). Well, Sir, I stop.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): Sir, I wish to draw your attention to one very important matter. We are discussing a very important subject and it will be very difficult for any one of us to compress our ideas in ten minutes. I would therefore request you to relax your rule and to give us time to express our ideas freely and fully. The other day when we made this request to the Honourable President we were assured that we shall have full and ample time for discussion. I hope you will kindly accede to our request.

Mr. Vice-President: As a matter of fact yesterday every honourable member exceeded the ten minutes limit. I am in the hands of the House: I can give any amount of time you want. But after all there must be some definite rule.

Prof. N. G. Ranga (Madras: General): Sir, you have said that yesterday every Member was exceeding the ten minutes limit. As an experienced speaker I would like to say how annoying and how troublesome it is for a speaker to be reminded by your bell that his time is up. There is considerable force in what my Honourable friend has said, namely, that it is impossible for anyone to develop any point satisfactorily within the short space of ten minutes. It is necessary that the period should be extended at least to twenty minutes and if necessary, the general discussion should be extended by one day more.

Mr. Vice-President: Are you prepared to give one day more to the general discussion?

Many Honourable Members: Yes.

An Honourable Member: What about those who have already spoken and taken only ten minutes time?

Dr. Joseph Alban D'Souza (Bombay: General): Mr. Vice-President, never before in the annals of the history of this great nation, a history that goes back to thousands of years has there ever been, and probably will there ever be, greater need—nay, Sir, I may even say as much need—as at this most vital and momentous juncture when this Honourable House will be considering clause by clause, article by article, the Draft Constitution for a Free, Sovereign, Democratic Indian Republic—as much need for a quiet and sincere introspection into our individual consciences for the purpose of giving unto Caesar what unto Caesar is due; as much need for a keen spirit of fraternal accommodation and co-operation whereby peace, harmony and goodwill will be the hall-marks of our varied existences individually as well as collectively; as much need for a sufficient breadth of vision so that the complex and the difficult problems that we have to face in connection with this constitutional set-up may be examined primarily from the broader angle of the prosperity and progress of the country as a whole; and lastly, as much need for an adequately generous and altruistic display of that well-known maxim "Love thy neighbour as thyself", so that in the higher interests of the nation as a whole, sentimental, emotional, parochial particularisms may not be allowed unduly to influence the decisions of fundamental policy affecting the nation as a whole.

It has been admitted by several Members—practically by every Member who has spoken before me—that the Draft Constitution is an excellent piece of work. May I say that it is a monumental piece of work put up by the Honourable Dr. Ambedkar and his Drafting Committee after months of laborious work which may definitely be qualified as the work of experts, work which is comparative, selective and efficient in character right from the beginning to the end.

After these general remarks on the approach to the examination of what the Honourable Mover in his speech styled the formidable document before this Honourable House, which he has told us is the bulkiest amongst all the Constitutions in the world, containing 315 articles and as many as eight Schedules, after indicating to the Honourable Members of this House what ought to be the approach to the consideration of this fundamental document, I crave your permission to refer to a few items in the context of the Constitution. As a Member of the Advisory Committee for Minority Rights, I have been and am particularly interested in the Justiciable Fundamental Rights. I feel at this juncture that it is my bounden duty to express my gratitude in the highest form possible to the Honourable Sardar Vallabhbhai Patel, the

Chairman of the Advisory Committee for the highly satisfactory and equitable manner in which these rights have been meted out to the minorities by the majority party. I feel sure, Sir, that it is this satisfactory and equitable deal that will make the minorities cling to the majority through thick as well as thin. Sir, it is my earnest hope that these rights as they are laid down in the Draft Constitution will not be permitted to suffer in any way whatever during their transit through this Honourable House.

Whilst I am on the subject of minority rights, there is one humble submission that I would like to place before the Honourable Mover of this Resolution. It is in connection with Article 299 of the Draft Constitution which says:

"There shall be a Special Officer for minorities for the Union . . . . . and a Special Officer for minorities for each State . . . . . who shall be appointed by the Governor of the State."

Necessarily, Sir, the Special Officer of the Union is under the Central Legislature, but what I would submit to the Honourable House is that some modifying measure should be introduced whereby while the appointment of the Special Officer at the Centre is by the President, in the nine States it should also be by the President. In some way or other these Officers in the States should be made responsible to the Centre. If that is done, I dare say work in the States by these Officers will be done without fear or favour. It is a submission that I make and I do hope that if it is in any way possible a modification should be made with the object of making the Special Officer in the State responsible to the Centre.

The other submission is also on the subject of minority rights and deals with the right to constitutional remedies in Article 25. Ordinarily, as the Draft Constitution stands, only the Supreme Court will be dealing with these cases. But, Sir, I wish to point out to this Honourable House that most of the cases will be concerning the poorer section and poor classes of our citizens, especially amongst the masses. There is a provision made in sub-clause (3) that Parliament may by law empower other courts than the Supreme Court to deal with such cases. But what I submit is that rather than wait for Parliament in time to come to introduce legislation to empower other courts, it should be done here, and it would ease the situation of the poorer class of people particularly the masses, if by means of modification something is introduced straightaway, not waiting for parliamentary measures or enactions later on.

Sir, the last point I wish to make naturally arises from the suggestions I have already made with reference to the Special Officer for minority rights being made responsible to the Centre. I am sure the Honourable House has already made out that I am for a very strong Centre. The stronger the Centre the greater will be the consolidation of the State services and State work. The history of India shows that for want of strength in the Centre, empires have passed away and dynasties have disappeared. The question of a strong Centre may be considered a paramount one and this is what will have to be done if we want to maintain the freedom achieved after centuries of foreign domination. A strong Centre is absolutely necessary in order to consolidate the entire Union, and I do hope that the Constitution as it is laid out will be passed with the three subjects: Union subjects, Provincial subjects and the Concurrent subjects with residual powers given to the Centre as indicated in the Constitution.

Sir, I am thankful to you for giving me the opportunity of expressing my views on this Draft Constitution.

The Honourable Shri K. Santhanam (Madras General): Mr. Vice-President, we have come to the last and the most difficult stage of our work. While I am anxious that we should finish this work as expeditiously as possible, we may

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not forget that we are making the Constitution of India and that for mere speed we should not sacrifice a proper and careful consideration of the provisions which may affect the welfare and the future of this Country.

The Drafting Committee have done a good job of work, but at the same time I am afraid they cannot escape two valid criticisms. The Committee, I think illegitimately, converted themselves into a Constitution Committee. They have taken upon themselves the responsibility of changing some vital provisions adopted in the open House by this Assembly. They have also felt themselves entitled to reject the reports of committees appointed by this House.(*Hear, hear*. I happen to be a Member of the Committee which reported on the future constitution of Delhi and the Centrally administered Provinces. It is true that the report of that Committee was not discussed in this House and no decisions were taken, but I think the recommendations of that Committee were more entitled to be embodied in this Constitution than the views of the Drafting Committee. (*Hear, hear*). Sir, I shall not labour the point and I leave it to the House to judge when the clauses come up which proposals the House will choose to accept. But I would confine myself today to discuss certain fundamental principles which were touched upon by the Mover of this Resolution.

Dr. Ambedkar rightly stressed those aspects of our Constitution which make for rigidity and flexibility and he claimed that the Constitution of India as drafted is more flexible than the American Constitution or other federal constitutions. But I venture to suggest that flexibility is not always a virtue. The constitution of a country is like the human frame; certain parts of it have to be rigid in order that the constitution may endure; there will have to be other parts which will have to be flexible. So, I would like you to concentrate on those parts which have to be rigid. I think it is dangerous to compromise with fundamental principles. We may think it is expedient to compromise with them for the necessities of the moment, but once we compromise on fundamental principles that compromise becomes a canker in the Constitution and will finally destroy it.

Sir, what are the fundamental principles which are sought to be embodied in this Constitution? First of all, there is to be a single, equal and secular citizenship. Secondly, there is to be adult franchise. Thirdly, it is to be a Federation. Fourthly, there is to be a responsible type of executive. I suggest that we should examine the provisions of the Constitution to see whether every one of these principles has been embodied to the fullest extent.

Take for instance the principle of single, equal and secular citizenship. These are said to be protected by the Fundamental Rights. But Dr. Ambedkar himself admitted that every one of the Fundamental Rights is subject to a large exception. He said that even in the United States of America, the Supreme Court has had to modify these Fundamental Rights. That is quite true. But even our Supereme Court will have to deal with these Fundamental Rights. While it was the function of the Supreme Court of the United States of America to restrict the scope of the Fundamental Rights by considering the necessities of the State, it will be the duty of the Federal Court or the Supreme Court of India to restrict the scope of the limitations. For, if the limitations are to be interpreted broadly, then we may as well omit the Chapter on Fundamental Rights altogether.

Sir, I think we should scrutinise these provisions and see that the limitations imposed are as narrowly and as strictly defined as possible, because in these days of emergencies and emergency powers, it is essential that some at least of the Civil liberties of the people should be preserved by the Constitution. It should not be easy for the local legislatures and even the Central Legislature to take them away altogether.

Sir, there is next the question of adult franchise I wish that we could adopt it as a principle that it should be the duty of the Central Government to compile and maintain the Registers or Rolls of adult franchise throughout the country, because we know that Provincial Governments and local Governments who modify these rolls on linguistic and other secular considerations are not unlikely to be a little lax in the careful preparation of these Registers or Rolls (*Hear, hear*). There may be defects. For instance, there was an attempt by Madras to compile a register of voters. It was all done in a single day or two days and there are complaints that 50 per cent of the voters of the city have been left out. In this particular instance, there was no motive. But, administrative efficiency and thoroughness in the compilation of these Registers was not observed. Sir, we feel we could not be too careful or too watchful in this matter. We want every citizen of India to be automatically included in the Register and his right to be in the rolls protected, by all means possible in the Constitution. Therefore, I would suggest to this House that they should consider the desirability of placing the responsibility of preparing and maintaining this Register on the Central Government itself. Now the Central Government has the responsibility of taking the census of India at ten-yearly intervals. I think we may create a permanent machinery which will not only take the ten-yearly census, but also maintain the Registers of adult franchise throughout the country so that there could be no complaint about and no manipulations of these Registers.

Sir, Dr. Ambedkar spoke of the dual polity. Now we have got three Lists—the Federal List, the Provincial List and the Concurrent List. The Drafting Committee has expanded the scope of the Concurrent List. We have had experience of the Concurrent List. It tends to blur the distinction between the Centre and the Provinces. In the course of time it is an inevitable political tendency of all Federal Constitutions that the Federal List grows and the Concurrent List fades out, because when once the Central Legislature takes jurisdiction over a particular field of legislation, the jurisdiction of the provincial legislature goes out. Therefore we may take it that in ten years or fifteen years' time the entire Concurrent List would be transferred automatically to the Federal List. We must reflect whether this is what we want and whether this is desirable. If we do not want it we will have to see that the Concurrent List is either restricted to the minimum or define the scope of the Central and Provincial Jurisdiction in regard to matters mentioned in that List.

Then I come to the question of the responsible or cabinet type of executive. It is of the utmost importance in every responsible government that the frontiers of responsibility should be clear and definite. There should be no ambiguity about it. When once responsibility is blurred, the cabinet type of government is automatically annulled and we get near the presidential type of Government. I do not myself object to a presidential type of government and it may quite suit the country. If necessary, the Centre and the Provinces can adopt a Presidential Chapter knowing all the implications and the consequences. In many cases I think the presidential type is superior and much better suited to India. It confers stability and I think stability rather than flexibility is the need of the hour for India. But let us not adopt the cabinet type and then try to undermine it by all kinds of devices.

Take for instance the Instrument of Instructions to the President and to the Governors. Originally there was only an Instrument of Instructions to the Governors. Now the Drafting Committee have put in a Chapter on Instrument of Instructions to the President. What happens if the Prime Minister of India ignores these Instructions? Will the Governor-General tell him, "Now according to the Constitution it is my right to insist on the Instruction?" There is a possibility of conflict between the President of India and the Prime

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Minister and the Cabinet. Similarly in the provinces also. These Instruments of Instructions may bring about a conflict between the provincial Ministries and the Governor. I think if we are going in for responsible government, we should go in for it full and entire. Let us not compromise on fundamental principles, because compromise on fundamental principles will land us in all kinds of dilemmas and anomalies and it will not be easy to saddle the Constitution with different methods to deal with each dilemma.

Within the time at my disposal I have tried simply to touch upon certain points of importance which will have to be discussed thoroughly when we take up the Articles of the Draft Constitution.

Sir, there are, however, one or two vital matters which have to be considered in particular. For instance, take the provisions for changing the Constitution. It is provided that the change can be effected only in one sitting by a certain majority in both Houses. I think in the matter of a Constitution changes should not be allowed easily, because political parties may come into power owing to sudden changes in national feeling. The Constitution should be considered as the spinal chord. If it is more flexible than necessary and if it is altered every now and then, simply because a party has got majority in the legislature, then the whole basis of democracy will go to pieces. I think therefore the provisions regarding changes in the Constitution require to be carefully thought out. Changing the Constitution should not be made easy. At least if the changes on most important matters are vested in the Parliament, I would suggest that it should be not only by a larger majority than the actual majority but that it should be done at least twice over after an interval of six months or one year. We may thus ensure that the changes in the Constitution are brought about with a full realisation of the consequences. We should not change our Constitution hastily. Canada has not changed her Constitution ever since it was set up. Has she suffered for it? The United States of America changes its constitution only very rarely.

I think a rigid Constitution is for more important for stability than flexibility and ease in changing the Constitution. The Constitution is the bone work of our freedom, and bones must be rigid rather than flexible.

Sir, I am sorry that Dr. Ambedkar went out of his way to speak about village panchayats and say that they did not provide the proper background for a modern constitution. To some extent I agree but at the same time I do not agree with his condemnation of the village panchayats and his statement that they were responsible for all the national disasters. I think that in spite of revolutions and changes, they have preserved Indian life and but for them India will be a chaos. I wish that some statutory provision had been inserted regarding village autonomy within proper limits. Of course there are difficulties because there are villages which are very small and there are big villages, and many of them may have to be grouped for establishing panchayats, but I do think that at some stage or other when all the provinces have set up panchayats, their existence may have to be recognised in the Constitution, for in the long run local autonomy for each village must constitute the basic framework for the future freedom of this country.

Sir, I am finishing in a minute. There is only one more point. I shall merely touch upon it. I agree with the mover that the artificial distinction between Provinces and States should vanish as quickly and as speedily as possible. The only impediment is that certain financial interests have developed owing to the possession of Central subjects by the States, and if we can find a formula to protect the States from the financial consequences of adopting the same constitutions as the provinces, the States may not object to fall in line with the provinces. Therefore I suggest that we should adopt the principle that no State should suffer by falling in line with the provinces

and let us give them a guarantee that they will be recouped from Central funds for any loss caused by falling in line with the provinces. I suggest that we may consider a formula for protecting them against any kind of financial suffering on account of becoming indentical with provinces. I agree that we should not have the anomaly of having A class States and B class States which will only cause confusion. If possible, I would like that all these different categories of units should be abolished. There should be only one standard unit constitution with freedom for these constitutions to adjust themselves to local circumstances.

Sir, owing to the rigid time limit which I fear is not conducive to a proper discussion of the Constitution, I have confined myself only to a few points. I hope they will receive the consideration of this House.

Shri R. K. Sidhwa (C.P. & Berar: General): Mr. Vice-President, Sir, as an able and competent lawyer, the Honourable Dr. Ambedkar has presented the Draft Constitution in this House in very lucid terms and he has impressed the outside world and also some of the Honourable Members here, but that is not the criterion for judging the constitution. This is a Constitution prepared for democracy in this country and Dr. Ambedkar has negatived the very idea of democracy by ignoring the local authorities and villages. Sir, local authorities are the pivots of the social and economic life of the country and if there is no place for local authorities in this Constitution, let me tell you that the Constitution is not worth considering. Local authorities today are in very peculiarly miserable condition. The provinces which complain that the Centre has been made too strong and that certain powers have been taken away from them, have themselves in the intoxication of power taken away the powers of the local bodies, and in the name of mal-administration today more than 50 per cent of the local bodies have been superseded by Provincial Governments. Sir, this was the attitude in the previous British regime, and our Provincial Governments are merely following that practice instead of revolutioning the entire system of local bodies. Unless a direction is given in the Constitution to Provincial Governments to make these bodies very useful organisations for the uplift of villagers, let me tell you, Sir, that this document is not worth presentation in the name of democracy. The finances of the local bodies are in a miserable condition. The Provincial Governments would not like to give them the electricity taxes, the entertainment taxes, etc. which are the only sources of revenue for these local bodies in Western countries. Here in this country all these taxes are grabbed by the provinces. This has left the local bodies mere skeletons today. If this is the tendency, how can you expect the local bodies and villages to prosper? His Excellency the Governor General in his recent speeches and also our Deputy Prime Minister in his speech in Bombay stated that every villager must be made to understand that he is a responsible man or a responsible woman and made to realise that he or she has got a share in the administration of the country. I fail to understand how this can be done if you ignore the villagers, the largest portion of the population?

You will merely be taking power into your hands and make some improvements in the top, but the masses of people are struggling today to become happy and you will be nowhere helpful to them. On the contrary the present feeling that the masses have been neglected will be intensified if we pass this Constitution without really making a reference to the points that I have mentioned. Dr. Ambedkar, Sir, has made a confession rightly that many of the provisions of the various constitutions in other countries have been borrowed and inserted in this Constitution. I personally think that there is nothing wrong in borrowing some good provisions that may be existing in other countries. The only thing that has to be seen is that these provisions which may be beneficial in those countries may be equally beneficial in this country also. I,

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however, see from Schedule 7—they are important lists—that the Union Power List, the State List, the Provincial List and the Concurrent List, have been copied wholesale from the 1935 Act, barring a few changes here and there. I do not know whether they have taken care to enquire from various provincial Governments whether they have found loop-holes. I will mention one or two items. The terminal tax, the profession tax and the levy of taxes on Government of India buildings, have been the bone of contention between the Provincial Governments and the Central Government, in as much as in some cases the matter had gone to the Federal Court. It seems to me that the Sub-Committee have merely copied all these items without giving any consideration to the hardships that have been imposed by the Provincial Governments. I, therefore, feel that these three lists when they come before the House should be given due attention by the House. Last time when we met this list came before us and the time was not sufficient and we left it as they were and I hope very minute consideration will be given to this list which is as important as any other provision of this Constitution.

Coming to the Fundamental Rights, I do not know whether the Committee had the power to upset the unanimous decision of this House. The Sub-Committee is perfectly justified in making recommendations, I do not dispute that and these are also recommendations, I admit. But on a fundamental matter when the House after mature consideration had taken a decision on a basic principle on the Fundamental Rights, I feel that they have exceeded their rights in making even those recommendations.

I will only give one illustration. The Constituent Assembly in its last session passed the Fundamental Rights:

"No person shall be deprived of his life or liberty, without due process of law nor shall any person be denied the equal treatment of the laws within the territories of the Union."

The Drafting Committee have made a change in this, a revolutionary change, I should say and put before this Honourable House. I will read their recommendation:

"No person shall be deprived of his life or personal liberty except according to procedure established by law. . . . ."

The remaining words have been deleted. We will take this matter up when the occasion arises. But Sir, I do feel that in the Fundamental Rights that we passed last time there was already a grievance that we have not gone to the extent to which we should have and if you are going to curtail even those rights of the citizen, I do feel, Sir, that the very nomenclature of the Fundamental Rights would be ridiculed.

I was really impressed with one point that was raised in regard to the constitution of the States. I endorse what he has stated in this respect. When we made this Constitution last time the conditions of the States were quite different than what they are today and I fail to understand why there should be a separate Constitution for each new State. There should be a provision that all States should adopt the provincial part of this Constitution. Instead of the Governor, the ruler should be the Governor and likewise certain other changes, but there should be no separate Constitution for each State. After all they have all acceded to the Indian Union and their laws should be the same laws as ours. It is not one-man rule now and I fail to understand how there can be two laws functioning in one country when all States are part and parcel of our own kith and kin in this Union. I therefore, feel, Sir, that very serious consideration has to be given to this question as to whether we can allow the States people to prepare their own constitution which may go against the very fundamentals of the main Constitution that we are now preparing. In the Fundamental Rights they may go somewhere lesser than we have decided. In many of the matters they may go against what we have finally provided for every citizen of this country.

Sir, take for instance the High Courts. Today in the High Courts of India the best men are on the benches. They are first-rate men and even their judgments are appealable to the Federal Court and to the Privy Council; but in these second-rate High Courts in the States—I do not mean any disrespect by stating second-rate, but it is a fact that they are not first-rate men—their judgments are not challengeable in a Federal Court. Is that fair, I ask you that you do not give this right to the citizen of a State? I therefore feel, Sir, that this matter also will have to be very seriously considered and to make the work of the State people very easy, provincial part of this Constitution should be absolutely made applicable to them, barring a few changes.

Lastly, a reference has been made about the reservation and protection for minorities. I have remained in this Minority Committee and Sub-Committee of the Minorities and I am really thankful to the majority community for the manner in which they have dealt with the minority question and I must say that there should be no complaint from any quarter in this respect. As far as our community is concerned, although the offer has been made for the reservation of seats, we have refused it with thanks. Similarly, yesterday Kazi Syed Karimuddin insisted on removal of reservation of seats. This statement even at a later stage is very welcome. Just as when the mojority community offered the reservation of seats to the Parsi community, we said: "No, thank you, we do not want," similarly all the groups, I expect, Sir, will refuse with thanks the offer of the majority.

Maulana Hasrat Mohani (United Provinces: Muslim): Mr. Khaliquzzaman wanted reservation and not Syed Karimuddin.

Shri R. K. Sidhwa: I do not follow. I therefore appeal that this communal poison should be removed from this country and this Constitution should be made into a document about which we could feel proud and we should be able to say to the world that this is a document which the Indian people have made for others to imitate. With these words, Sir, I end. I hope that some of the points which I have mentioned will be borne in mind when the time comes. Thank you, Sir.

Shri Ram Sahai [United State of Gwalior-Indore-Malwa (Madhya Bharat)]: *[Mr. Vice-President, Sir, many Members have shed light on a number of points relating to the Constitution. I shall not go over them again. I shall only speak a few words in regard to the States. I would like to make it clear to the House that the people of the States are in favour of a strong Centre and would whole-heartedly support the establishment of a strong Centre in this way. I submit, however, that much thought does not seem to have been given to the States in the Constitution that has been placed before us. I would like to illustrate this point by one example.

In Schedule I, Part III, the States have been specified as they had been in the past, although a number of States have merged to form Unions and have in a way given themselves the character of a province. Madhya Bharat Union may be taken as a case in instance. The Raj Pramukh of Madhya Bharat signed a new Instrument of Accession on June 15, by which all the subjects mentioned in the first and third lists of Seventh Schedule excluding taxes and duties, have been handed over to the Centre. This means that even the Judiciary has been subordinated to the Centre. But even then no appeal can lie to the Supreme Court from the decisions of its High Court under Sections 111 and 113 of the present Draft. When the Madhya Bharat Union has, by its new instrument of accession surrendered all its rights, transferred all its powers to the Centre and agreed to all its proposals, I cannot see why a provision has been made prohibiting appeals being made to the Supreme Court against the judgments of the High Court of the Union.

* [ ] Translation of Hindustani speech.

[Shri Ram Sahai]

Section 113 lays down that a reference can be made to the Supreme Court. But I fail to understand why an appeal against the High Court cannot be admitted in the Supreme Court. This is a matter which particularly affects the rights of the people. I submit that a single provision of such a type would have been sufficient for the protection of the rights of the people. Our efforts to bring the High Court of the Union, into line with the Provincial High Courts would be facilitated and would be crowned with success if these High Courts are made subordinate to the Supreme Court. And this step would also considerably facilitate the attempts to bring the Unions into line with the Provinces. It may be said that the High Courts are not sufficiently developed there but so far as the High Courts of Gwalior and Indore are concerned I can say with some pride that they are in no way inferior to the High Courts of the provinces, nor do they have lesser standing. They too have as learned Judges as have the High Courts of the provinces.

Honourable Dr. Ambedkar wants that Constituent Assemblies may not come into being in the States. But I think that if Dr. Ambedkar had been a little in touch with the Ministry of States regarding this matter and had placed it before that Ministry, these complications, that have been introduced now, would not have arisen at all. I would place before him the matter of the Constituent Assembly of Madhya Bharat as a case in point. An interim legislature is being formed there and a Constituent Assembly will also be formed. What may possibly be the necessity of forming these two at the same time? There will be interim legislature there and after that the Constituent Assembly will be formed. No session of the interim legislature is in view as yet and it is yet to be seen when the work of the Constituent Assembly would start. The members of the interim legislature are here in this Constitution Assembly to frame the Constitution. I fail to understand why these people who can make laws in the legislature and are framing the Constitution here, cannot frame the Constitution there. Such complications have been brought in. I am sure that if Dr. Ambedkar had consulted Sardar Patel in this matter, many problems would have been easily solved.

No necessity now remains for the Constituent Assemblies that have been formed or are being formed in the States particularly when almost all the States have taken the shape of provinces.

I would like to submit to the House that the third part of the First Schedule should be revised and the Unions, wherever they have been formed, should be included in the first part. Such an inclusion will result in bringing the States up to the level of the provinces—the only remaining difference would be that the Governors of the provinces would be elected by the public, while the Rajpramukhs of the States would be elected by the princes. As remarked by Messrs. Santhanam and Sidhwa, it would be very advantageous to put the provinces and the Unions on the same footing and in my opinion such a step is both necessary and essential. We should revise the parts of both these schedules, and they should be redrafted in such a way that the States which have already formed Unions be brought to the level of the provinces.

The Committee of experts appointed in connection with the financial provisions has decided that within ten years all the States should at least be brought to the level of the provinces. I find that there is nothing in this Constitution which would permit the report of the committee of experts being given a practicable shape. I would therefore request the drafting Committee that it should make some such provisions by which States which have merged to form Unions should be brought to the level of the provinces. And there should remain no difficulties in respect to this matter.

I would like to submit to the House one thing more, and it is that the big States like Mysore and Travancore, which claim a better position than most of the provinces, should—and I request the rulers and representatives of these states to give up their interests in this aspect—accept the same status as is enjoyed by the other provinces. All the resources, which are not essential for the State, should be handed over to the Centre. In this way we can all help to build up a strong Centre. One cannot fail to understand that like other States Gwalior State could have maintained its separate existance. But the ruler of that State himself realized this necessity and handed over all his powers to the Centre. Just as this Constitution is meant for the people of the provinces similarly it should be for the people of the States also. Hence I would like to submit to the House and more specially the Drafting Committee that they should adopt some such device that those Unions which have assumed the form of provinces and the big States which have not merged into any Union may be able to attain uniformity in this respect.]

Shri Jainarain Vyas (Jodhpur): *[Mr. Vice-President, Sir, Dr. Ambedkar and his colleagues as also the typist and copists have to be thanked for the labour expended in preparing the Draft Constitution that is before us. This is a very big Draft and many things have been included in it. But, as is the case with all drafts prepared by men, this Draft too has many defects. In particular, the use of the word "State" which has not been defined at any place is, in a way, very confusing to all of us. What a State means from the territorial or regional point of view is left entirely vague. Its definition is not given at any place therein. From the point of view of rights of citizenship also it cannot be gathered what the term "State" means. For purposes of Fundamental Rights the term "States" has been made to include Legislatures of the States, Local Governments and the Governments of the States. As the word "State" was generally used for Indian States, it would have been better if some other word had been substituted for it.

States too have been divided into different categories. There are Governors' Provinces and Chief Commissioners' Provinces and the third category would consist of what are called States that is to say, Indian States. They are specified in Schedule I, Part III. I support the view of Dr. Ambedkar, which he expressed in the course of his speech, that the States should be as big as the provinces and they should be in line with the provinces. In fact we the people living in States cannot do justice to our economy by remaining in small territories nor can we properly carry on our administration. But at the same time we would like to tell Dr. Ambedkar and his colleagues that they should have also shown some anxiety to bring us into line with the provinces. In Schedule I, Part III, they have divided us into small units. We should have been grouped into larger units even there. States, that is to say Princes' States have not been given the right of appeal to the Federal Court by the article providing for appeal to that Court. Only the provinces can avail themselves of that right of appeal. Why have we been made Harijans in the matter of appeals to the Federal Court? This policy of treating the people of States as Harijans in the matter of appeal to Federal Court reveals that even you have not cared to form big units. On the contrary I find that you are keeping some mental reservations. You say that we should form big States but then it is your duty that you should grant us our rights. Mr. Sidhwa observed just now that we should come on a par with the big provinces. I ask, who does not want to come on a par with them? But you say that the Princes of the States and the people of the provinces can be Governors. Why do you not give this opportunity to the people of the States? If you really mean that the States and Governors' Provinces are of two different categories, you should say it

*[ ] Translation of Hindustani speech.

[Shri Jainarain Vyas]

clearly, as also that you want to keep this reservation in respect to the States—that you will keep some such matters excluded and will not give them to the people of the States. You should be quite frank in these matters. On the one hand it is said that the States should be brought on a par with the Governors' Provinces and on the other that the people of the States will not be entitled for appointment as Governors though the Princes of the States may be so appointed. I do not appreciate this distinction. I think that this is a defect in this Constitution and it should be removed.

Another observation which I would like to make is in regard to the territories of the provinces. It has been provided in this Constitution that some territories of the provinces can be separated from them and joined to other territories, that two or more territories can be joined together to form a province. The condition for forming such provinces is that either the legislature of the State or its members or the majority of the members should submit to the President of the State that they want to form a separate province for themselves. But in this matter too a reservation has been kept against the people of the States which are specified in Schedule I, Part III. The States are not permitted to form a big unit by submitting a proposal through their legislatures or through the Members of their legislatures. For that the consent of the State is necessary. I do not understand what "consent of the State" means. If the legislature of the State consents, if its members consent, it should have been taken to be the consent of the State. But perhaps "consent of the State" means "consent of the ruler". If it is not so, will a referendum be held or will it be ascertained by some other system? If consent of the State does not mean consent of the ruler, it should be stated clearly. Therefore, I think that so far as the States are concerned, the constitution is not fully clear.

I would like to make one or two other observations about this Constitution. I admire that equal rights have been given to all classes of people but I cannot say whether it is deliberately or otherwise that while the people have been given the right of access to Dharamshalas and wells, they have not been given the right of entering temples. I cannot say whether the fact that while the Harijans have been given the right of access to wells, Dharamshalas, etc., they have not been given the right of entering temples came under the notice of Dr. Ambedkar. I think that it is either a mistake or an omission. If it is an omission, it should be provided for.

There is no doubt that it has not been considered necessary to differentiate between the minorities and the majority and the citizens have been considered citizens in a general sense but even then it has been accepted that if some educational institutions are run by the minorities, the State should be able to aid them. It means that under this Draft it would still be possible to run the existing communal schools and educational institutions. *I do not think that it is right to leave scope for such a possibility when we are free and the people of the minority communities and the majority community have to live as brothers.* But the system of Grants-in-aid to such institutions would produce only such a result.

I have to make only one more observation and that is about the language. A number of our brothers have spoken about it. An Honourable Member went so far as to remark that Hindi Imperialism is being established here. Another Honourable Member said that linguistic fanaticism is being fomented here. I would like to tell them that no question of Hindi imperialism or linguistic fanaticism is involved, when we say that we should have a national language of our own. When we can adopt English I do not understand why we cannot adopt Hindi. If you do not want to adopt Hindi, have courage and say that English is our national language. But you do not say that. When English

is not our *lingua franca* it is not right that we sould not allow another language to become the national language. I sympathise with those who say that they cannot understand Hindi but at the same time I would say that they should now try to evolve a national language of their own. If we do not do so there is not so much the danger of the imposition of the English language as of the question of linguistic provinces taking the form of linguistic countries. We do not say that all the people should speak one language only. So long as they cannot do so they may speak English—no one will prevent them from doing so. I am speaking Hindi although my language is Rajasthani which is different from Hindi and has some peculiarities not to be found in Hindi. But at the same time I know that the largest number of people can speak Hindi and can learn Hindi. Therefore we should adopt one national language. I hope there will be no misunderstanding about those who are trying to make Hindi the national language, that they want to establish supremacy of that language. They only want one national language in the interest of our country. It does not mean that the provincial languages will be put under any ban or that English will be bereft of the position it has attained. It may be that in the long run English may no more be there.

With these words I support the Draft Constitution placed before us by Dr. Ambedkar and I hope he will try to incorporate the changes that have been suggested.]

Shri B. A. Mandloi (C. P. and Berar: General): Mr. Vice-President, Sir, Dr. Ambedkar, Chairman of the Drafting Committee, in a very lucid speech explained the salient points of the Draft Constitution. In answer to the questions which are raised, namely, what is the form of the Government and what is the constitution of the country, he has pointed out that it is a federal type of Government with a strong Centre and a parliamentary system of Government with a single judiciary and uniformity in fundamental laws. He has also said that the emphasis has been placed on responsibility rather than on stability. It is strong enough in peace-time as well as in war-time. He has answered in his speech the various criticisms levelled against the Draft Constitution and I submit that his speech is a very lucid exposition of the Draft Constitution. The Draft Constitution prepared by the Drafting Committee is based on the reports of the various Committees, namely, the Union Power Committee, the Provincial Constitution Committee, the Advisory Committee and the Minority Committee. The Constituent Assembly in its very first session passed a Resolution with respect to the objective of our Constitution. That Resolution was moved by our respected leader, Pandit Jawaharlal Nehru, and was unanimously passed. We have to see that our Constitution is based on that fundamental Resolution—on that Objectives Resolution—in which the claims for justice, liberty, equality and fraternity had been granted. I submit that the Draft Constitution is a true reflection of the Objectives Resolution and therefore we can say that it has fulfilled our object.

There is another touch-stone with which to see whether the Draft Constitution answers the purpose of our country and our nation. That touch-stone is whether it would maintain our freedom, our independence and our democratic, secular Government. I am of opinion that, looking from that point of view also, this Draft Constitution serves our purpose.

There are, however, certain omissions and certain things which are not found in this Draft Constitution and proper emphasis has not been placed on those subjects. The omissions are with respect to our National Flag and National Anthem. In a Draft Constitution and in a Constitution which is going to govern our country, there should be a proper place for the National Anthem and for the National Flag. There is also a necessity with respect to a common language and a common script. We should be definite on this because after all our aim is to be one nation and one State. In the absence of one common

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language we cannot claim to be one nation and one State. Taking into consideration the various languages prevailing in our country one can say without any controversy that the place of honour should go to Hindi and the script should be Devanagri script. We should bid good-bye to the English language as early as possible because it would be derogatory to our nationhood if we adopt a foreign language. The Hindi language is spoken and understood by a vast majority of the people in the country and the Devanagri script is a very scientific script and it should be adopted as the official script of our Government.

While we have attempted to make the Centre quite strong, I submit that we have not paid sufficient attention to our Provinces. The Provincial budgets are poor budgets and there is a chronic poverty prevailing in the Provinces. The responsibilities of the Provinces are great. We have to fight ignorance, disease and so many other things and we have to carry on nation-building departments and the constructive work in the provinces. The allocation from the Central revenues to the provinces should be on an equitable basis so that the Provinces may be able to discharge their duties properly and efficiently.

In his speech Dr. Ambedkar made an appeal with respect to the States—that the States which have formed into units and acceded to the Union should also be on a par with the Provinces. We would certainly like to see that uniform laws prevail there also and the level of progress is maintained in the States in a uniform manner. I therefore would suggest that in the Draft Constitution we should not make a distinction between the units of the provinces and the units of the States. We have got representatives of the States and we can, in consultation with them, bring the States to the same level as the other Provinces shown in Part I of the Constitution.

Something has been said with respect to the minorities. The Advisory Committee on Minorities has recommended certain safeguards for the minorities. Though the future relationships are going to take place on the basis of joint electorates, these safeguards have been provided. Sir, I submit that these are days of voluntary surrenders. In the year 1947 the British, after a rule of a hundred and fifty years, surrendered voluntarily though there was the fight of the Congress going on for so many years. Then we found that the Rulers of the Indian States have also surrendered. And I feel sure that if the minorities were to surrender the safeguards, they would be in a better and stronger position and they need not have any fear from the majority. If they surrender the safeguards and join the majority, coalesce with the majority and merge with the majority, we would have a stronger India and our ideal of nationhood would be realised earlier.

Sir, our Constitution is a Constitution which has been evolved by us from a comparison of the various constitutions prevailing in the civilized countries all over the world. Various good points from all the constitutions have been taken with such modifications as are necessary in the interests of our country. If we faithfully and honestly work out the Constitution, I feel sure that our country would be prosperous, would be happy, would be strong, and we would be able to maintain our independence and not only maintain our independence but would be fulfilling the great mission of our departed leader, the Father of the Nation, who said that hereafter India would be in such a position as to free the other dependent countries and bring peace and prosperity in the whole world.

With these words, Sir, I submit that the Motion moved by Dr. Ambedkar be accepted by the House.

Pandit Balkrishna Sharma (United Provinces: General): Mr. Vice-President, Sir, so many friends have come here and offered their congratulations to the Honourable the Law Minister who was in charge of this Draft Constitution that it will sound almost a tautology if I repeat the same sentiments

again. But I think I will be failing in my duty if I do not offer my humble and respectful congratulations to the learned Law Minister for the very lucid manner in which he has presented this Draft Constitution for our consideration.

Many friends and criticis have come here and levelled certain charges against our Constitution. The one charge which has been repeated by many friends is that ours is a very bulky Constitution. The Mover himself referred to the bulky nature of this document. When we really examine the clauses and articles of the various other Constiutions we come to the conclusion that ours is indeed a bulky Constitution. Sir, as you know, it contains 315 Articles, whereas the Constitution of British North America, that is Canada, contains only 147 Articles; the Commonwealth of Australia Act contains about 128 Articles; the Union of South Africa Act contains 153 Articles; the Irish Constitution contains only 63 Articles; the U.S. Constitution contains 28 Articles; the U.S.S.R. Constitution 146 Articles; the Swiss Federal Constitution 123 Articles; the German Reich Constitution contains 181 Articles, and the Japanese Constitution 103 Articles. A glance at these Constitutions shows that none of them contains more than 200 Articles whereas our Constitution contains 315 Articles.

Critics have tried to make a great deal out of this bulkiness of our Constitution. But we must not forget that ours is a big country of 330 millions and we are making a Constitution for almost one fifth of humanity. Therefore there should be no wonder that our Constitution is bulky. Not only are we making a Constitution for a number of people for whom so far no other country has made any Constitution but our problems are varied and are different. Also, at the same time we have tired to give in the constitution of ours a *modus operatus* whereby we have been able to set at naught the rigours of federalism and the vagaries of unitary form of Government. In an attempt to bring about that compromise between federalism and unitary from of Government, we had naturally to take recourse to certain Articles which are responsible for increasing the bulk of our Constitution.

As I said, Sir, our is a country which has got its own problems. In no country in the world are there what we call the principalities—the States —and there should be no wonder that in order to bring all these various factors in line with the present day democratic principles, the draftsmen of our Constitution could not compress into a few Articles all that they wanted to do. Therefore the charge that has been levelled against our Constitution that it is bulky seems to me to be frivolous.

The second charge is that we have borrowed almost *verbatim* from the various constitutions and that we have not cared to glance at the Constitution of the U.S.S.R. Now, so far as this particular charge is concerned, I would like to draw the attention of the Honourable House to some very patent factual and fundamental differences that exist between our country and the U.S.S.R. Let us not forget that the Russian Constitution came into existence after full eighteen years of Government by a single party, the Communist Party of the U.S.S.R. For full eighteen years that party was in power The October Revolution of 1917 brought that party to power and, till 1935, they did not think of making a Constitution for their country. After eighteen years, during which period a rigid single-party rule was there, they thought of giving a constitution to Russia. Our conditions are far different from the conditions prevailing in Russia. Naturally, if we could not borrow any provision from the Russian Constitution which may appear on the face of it desirable, we must not forget that we did not borrow on purpose. It is said that the Russian Constitution gives the fullest scope to the minorities, but

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we forget that during the eighteen years when that rigid party known as the Communist Party of Russia was in power in what is called the Democratic Republics of Russia, it had established such a strong hold upon the various Republics that constitute the U.S.S.R., that in spite of the fact that the Constitution gave them power to break off their connection with the Central Government, in the very nature of things it is impossible for them even to think of doing so. The Republics of Georgia, Ukraine, etc. and some of the other Central Asian republics, long before a Constitution was given to them, were in the grip of that well-knit, well-organised Communist Party of the U.S.S.R. Therefore, to turn round and say that we have not taken this or that great principle of the Russian Constitution and embodied it in our own Constitution is to ignore the facts as they exist in Russia and as they exist in our own country.

Sir, if we look at the political development that has taken shape in our own country, we will find that it is on democratic principles that our party, the Congress Political Party, has developed. The Russian Communist Party has developed on a totally different basis and that basis is the basis of revolutionary totalitarianism. Therefore those friends who came to the rostrum and spoke very well of the Russian Constitution and twitted us for not having borrowed various clauses from the Russian Constitution, may be told that their criticism is absolutely baseless. While making that criticism they have not cared to look at the situation in our own country.

Then again, let us not forget that there is a vital difference between the principles, the aims and objects of the Russian polity and the principles and the aims and objects of the polity which we want to develop in our own country.

Sir, in Russia, the individual as such has got precious little value. It is the State, the Society and the Party for which the individual should exist. But here, under the inspiring leadership of Mahatma Gandhi we have learnt to look at things in a little different way. We consider individuals to be the basis of society and party and State. This insistance upon the individual makes our situation far different from the situation that prevails in Russia. For all these reasons if our Constitution makers could not borrow from the Russian Constitution, then I can say that they did so on purpose and that it was proper that they should have looked to the democratic countries for inspiration rather than to Russia which, though apparently a democratic State, is yet a Government on a rigid single party basis.

The third charge which has been laid at the door of our Constitution makers is that this Constitution has got a very powerful centrifugal tendency and that the little provincial autonomy which seems to have been given under the Constitution is likely to be taken away in the course of working this Constitution and that all power is likely to centre in the Union State. But why should we forget that we, our country, we all, have been chronic patients of what I may call centrifugalities? This centrifugal tendency is a tendency to fly away from the Centre. This tendency of the various limbs to break off from the body politic is a historical tendency. We should not ignore it.

Today we are sitting here to weld the Nation into a strong well-knit, well-organised society. If our Constitution-makers do not take care to guard against that chronic illness from which our country has been suffering for centuries, then we are likely to come to grief. Therefore I say that these friends and critics, who think that the Centre which has been given certain powers to meet certain emergencies is likely to abuse those powers, are trying to cry 'wolf' 'wolf' before actually the wolf comes to their doors.

There is no doubt that the Constitution does not contain any clause about village panchayats. A good deal of criticism has been hurled at it for that reason, but may I point out that the Constitution in no way rules out the development of the village panchayats? The Constitution does not put any obstruction whatsoever in the path of the development of those units of local self-government which will enjoy power for managing their own affairs, and therefore that criticism also seems to me to be without any foundation.

One word more, Sir, and I have done. I was rather pained to see that my esteemed friend, Mr. T. T. Krishnamachari, and my respected elder, Pandit Lakshmi Kanta Maitra, have taken our efforts, in the direction of trying to give a national language, with suspicion and even with a little sense of exasperation. I tender to my friend, Mr. T. T. Krishnamachari, a thousand apologies if that impression has been created. May I tell the House that those of us who feel that there should be a national language, that there should be a common medium by which we may be in a position ultimately to exchange our ideas and to express ourselves—this *lingua Indica* should be Hindi in our opinion—that certainly does not mean that we wish to tread upon the toes of any friends of ours. No provincial language can come to grief if those friends co-operate with us in evolving a national language. In trying to give a common language to the nation, our efforts are not with a view to exasperating any friends. We want sympathisers from every quarter. We want the whole group from the Dakshina to come to our rescue and to help us in our efforts to give a national language to this ancient land of ours. Thanks.

Pandit Thakur Dass Bhargava (East Punjab: General): (Began in Hindustani).

Shri S. Nagappa (Madras: General): Sir, may I request that those of the members who can express themselves in English should speak in English?

Pandit Thakur Dass Bhargava: Since my friends insist that I should speak in English, I bow to their wishes. It is true that I am able to express myself with greater ease in Hindi but at the same time I do wish that I should be understood by all the members of the House.

Sir, I wish to join in the chorus of praise which has been showered in this House on the Drafting Committee, but I cannot do so without reservation. When I bear in mind the complaints made by some friends here, I do feel that the Drafting Committee has not done what we expected it to do. Some of the members were absent, some did not join, some did not fully apply their minds. In regard to the financial provisions, what do we find? They have shirked the question and have not given us any solution whatsoever with regard to some other questions also. The real soul of India is not represented by this Constitution, and the autonomy of the villages is not fully delineated here and this camera (holding out the Draft Constitution) cannot give a true picture of what many people would like India to be. The Drafting Committee had not the mind of Gandhiji, had not the mind of those who think that India's teeming millions should be reflected through this camera. All the same, Sir, I cannot withhold my need of praise for the labour, the industry and the ability with which Dr. Ambedkar has dealt with this Constitution. I congratulate him on the speech that he made without necessarily concurring with him in all the sentiments that he expressed before this House.

I think, Sir, that the soul of this Constitution is contained in the Preambly and I am glad to express my sense of gratitude to Dr. Ambedkar for having added the word 'fraternity' to the Preamble. Now, Sir, I want to apply the touch-stone of this Preamble to the entire Constitution. If Justice, Liberty, Equality and Fraternity are to be found in this Constitution, if we can get this ideal through this Constitution, I maintain that the Constitution is good. In

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so far as these four things which are contained in the Preamble are wanting, then I am bound to say that the Constitution is wanting, and from this angle I want to judge the Constitution. I know that time is very limited and I cannot touch upon everything. I wish to speak about only three or four subjects.

In the first place, I would like to draw the attention of the House to Part II-Citizenship. There are about 60 lakhs of people or more who have come from Western Pakistan, Sind, Baluchistan and East Bengal. These people are not aliens. If technically they are regarded as aliens, I do maintain that it is a sin to do so, because this situation has been brought about by the Government who agreed to partition. Therefore to make a law that each one of them should go before a District Magistrate within one month and declare that he or she is a citizen of India is rather hard. In practice, I know it will be impossible as most of these 60 lakhs of people are illiterate and do not know anything about this provision in the Constitution. If any such illiterate man fails to register himself as a citizen under this article, what would happen to him? Therefore I maintain that this is a very serious flaw in Part II. We ought to see that all these persons who have come from Pakistan on account of this Government agreeing to partition automatically become citizens of India without any effort on their part. If they want to secure themselves by making a declaration, I have no objection, but in case they fail to comply with this provision, I maintain that we should have a provision that mere permanent residence entitles them to full citizenship rights. To insist that they can only become citizens after they have gone to a District Magistrate and made a declaration that they want to be citizens of India is, in my opinion, an act of tyranny on them.

I therefore submit that this clause should be amended in such a way that those 60 lakhs of people may become citizens of India without any special effort on their part.

Secondly, I beg to submit that in regard to the question of minorities, as you know, Sir, I have been taking the very same position which you have been taking in the Minority Committee and I must say that you yourself have been a sort of beacon light to me and to others who thought like you. In regard to this question, I beg to submit that under the third clause of the Preamble equality of status and of liberty will be given to all.

In regard to the majority community—Sir, there will be either single constituencies or plural constituencies. In regard to single constituencies my submission is that if a member of a minority community will stand for those constituencies the members of the majority community will not be allowed to stand. This means that the electoral right of the member of the majority community will not be equal to the electoral right of the minority community. Again if they had plural constituencies even then I maintain, it is very humiliating for any person to stand and secure the largest number of votes and then to be told that another person of a minority community will represent that constituency and not he who secured the largest number of votes. It is extremely humiliating and I want that in regard to the electoral right there should be perfect equality among the members of the minority community and the majority community.

Sir, I have been a worker all my life for the welfare of the minority community people. For the last 35 years I have been a worker and all those who belong to minority communities know that I have never made a speech on the occasion of budget when I have not submitted to this House that in regard to posts, lands, money, property, the members of the Scheduled castes should be given preference and priority and I do maintain it is necessary to pass such measures as will level up their economic and social equality.

I am in favour of Clauses 299 and 300 which provide sufficient safeguards for them, but in regard to this aspect of reservation of seats, I must submit that I am dead opposed to it. When weightage was sought to be given to the Anglo-Indians we made an effort to see that this weightage question is not introduced into our Constitution and we succeeded ultimately and by nomination any deficiency in the number of Anglo-Indians was sought to be made up and we have got section 293 and other sections where nomination has been impressed upon to make up deficiencies, if any. Now, Sir, I maintain that in regard to Muhammadans and Sikhs and Christians no occasion for reservation arises at all and the entire population is almost homogeneous, so far as wealth, social influence and status and other things are concerned. In fact some of these communities are perhaps better off than the majority community. In regard to Harijans, members of the Scheduled castes it may be said that in wealth, social influence and social status they are inferior, but all the same I want that their position may be levelled up in ways other than by reservation of seats. In regard to this right also I am agreeable that if there is any deficiency in any number according to section 67, then we will have recourse to nomination and by nomination the number may be made up if this House thinks that their right should be secured in this respect. There is no occasion for having reservations at all but if any are necessary this method of reservation is very humiliating to the majority community and will be very harmful to the minority community. Yesterday Mr. Karimuddin gave very good reasons in the House. In the Legislative Assembly Sardar Gurmukh Singh on behalf of the Sikhs said that he did not want reservations. I know that since August 1947 the situation has changed and my Muslim friends and my Sikh friends are coming round to the view that the reservations are not useful for them. I wish that many of them expressed their minds. In regard to reservations therefore my position is that if reservations are thought to be necessary by this House, the reservation should be made only by nomination. We know how the Bureaucracy used this power of nomination, but in regard to a President who will be elected by the people, I do not think that such a misundertanding or such a situation can arise. In regard to reservations the question of equality of status comes in the way and at the same time such a system tends to perpetuate the psychology of separation and the majority community is bound to consider that the reservation being there they are not bound to do anything further and the word fraternity which has been added in the last sentence by Dr. Ambedkar will lose its significance. If we want to abolish the sense of separation, it is necessary that we should not encourage the sense of separation by our own act. I therefore submit, Sir, that in regard to reservation I wish the House accepted the proposition which I am advocating from the very day in which I entered this House.

Some criticism has been made in this House that this Constitution is more political than social and economic in nature. Prof. K. T. Shah gave vent to his feeling yesterday and I for one respect every word of what he said, but may I humbly submit that in this Constitution we have got sections 32, 33, 38 which deal with the social and economic aspect? Now, Sir, I do not want that we should have a Constitution which we may not be able to work; if this Constitution said that the State shall provide full employment and amenities and these rights given in the directive principles were also justicable, we shall be stultifying ourselves and promising to do what we are unable to do at present as I do not think that the present Government of India is able to do what the other States in Europe can do. This Constitution very modestly says that we shall endeavour to the best of our ability to do what we claim to do. These directive principles have been spoken of disparagingly by some of the Members. I beg to submit that I regard these directive principles to be essence of this Constitution. They give us a target, they place before us our aim and we shall do all that we can to have this aim satisfied. In regard to this, sections 32, 33

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and some other sections provide social and economic basis for advancement. In regard to section 38 it says that the standard of living shall be raised. But the question arises. How shall the standard of living be raised?

In India a poor country, where the average earning of a man is only five shillings a week, compared to other countries of the world where the earnings are at least twenty times as much, we do not know how to face this question. If we go to the villages, even drinking water is not easily available. In regard to clothing, you know better than I can describe. In regard to these matters, if we want really to place some sort of an obligation on the Government, let us say clearly that the Government shall have, as soon as it gets into full power, to undertake the execution of irrigation and hydro-electric projects by harnessing the rivers, by the construction of dams, and adopt other means of increasing the production of food and fodder. Similarly, we can say certainly that the Government should provide good drinking water in the country. If you want rivers of milk and honey to flow in India, we should also say that the Government shall preserve, protect and improve the useful breeds of cattle, and ban the slaughter of useful cattle, particularly milch cows and young calves. I am placing this humble submission before the House. I know that the Congress party unanimously accepted this proposition when it was put to the House by me at the time of their meeting. But, it was my misfortune that this thing could not be debated in this House; and when the occasion came, the House was adjourned. I submit that there is a very great demand in this country that some steps should be taken to see that people get good food, good drinking water and milk. I have used the words "useful breeds of cattle and useful cattle". I may say every Government in India, even the Muslim Kings, the Government of Afghanistan, and even now Burma, have settled this thing by law for all time. In Burma, today, which has got no religion like ours, who do not regard the cow as sacred, they have enacted that slaughter of cows shall be banned. I do not want that. What I want is that the slaughter of useful cattle shall be banned. That is my humble submission to this House and I think nobody will disagree. This would, at the same time, give satisfaction to crores of people who regard this question from a different motive, though I do not regard it from that motive.

I have to make one other submission to the House and it is this. We have heard too much about the village panchayats. How these village panchayats will work I do not know. We have got a conception and that conception we try to put into practice. I wish to submit to this House for their very serious consideration that when the constituencies come to be formed under the new Constitution, they should make territorial constituencies; they should not make constituencies of cities alone and they should not make constituencies of villages alone. They should evolve a system by which the differentiation between the rural and urban people, between those who have too much and who have too little may for all time be removed, so that we may evolve one nation. In my visit to England just now, I found when an application goes to the Government for starting a new factory, they say, "go to the villages, we shall not allow any more factories in London". I want all the factories should be so established in India that for the villages or for groups of villages some sort of employment may be provided. The industries should be decentralised as much as the administration should be decentralised. The disparity between the mode of living of the rural people and the urban people must be abolished if we want to evolve one nation. At the present time, what do we find? The urban people and rural people are so much apart from each other in their modes of living, outlook on life. To go near the villages is very difficult. The urban people do not like to go to the villages. I know the Congress has gone to the

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all honour to the Congress. But, there are a good many in the Congress also who do not wish to go to the villages; they cannot go because their mode of living is different. You will have to evolve such constituencies in which the cities and villages come in without any distinction; if there is a constituency for a lakh of the population, the cities and villages should be included in one constituency. Some of the village people themselves may not like the urban peope coming in, and will regard this proposition as a contrivance for usurpation of their preserve but in making this proposal I have the best interests of the country as a whole before myself. I wish that the amenities of life may be the same everywhere in city as well as in village and in future all efforts be concentrated financially and politically to bring the village into line with the city. I hope if you will ponder over this question, you will agree that it is essential to work this constitution in such a manner and in such a spirit as will conduce to better life and better happiness of the nationals of this country.

Shri H. V. Kamath (C. P. and Berar: General): On a point of order, Sir, may I ask whether it is fair to this House that Dr. Ambedkar who has moved this motion and who is expected to reply, to the debate should remain absent from the House? Is anybody deputising for him here?

Mr. Vice-President: Yes.

Shri Algu Rai Shastri (United Provinces: General): *[Mr. President, Sir, the point raised by Shri Kamath just now appears to be quite sound because so long as the member in charge does not benefit from the speeches that are being delivered and does not pay attention to whatever is being said in the House, it is futile to have a discussion. Therefore, I request that so long as he is unable to be present here, the discussion should be postponed. However, if he has authorised some one else to note down whatever is said here and then to help him, there would be no harm done. Otherwise the whole discussion that is being held appears to be a mere waste of breath and will not be of any use in amending the Constitution.

You should, therefore, give a clear ruling that if there is to be a discussion, the member in charge, who is piloting the Draft, should be present here or some representative of his should be here. So long as this is not arranged, the discussion should be postponed.]

Shri Satyanarayan Sinha (Bihar: General): Mr. Saadulla who was in the Drafting Committee is here and he represents Dr. Ambedkar.

Mr. Vice-President: There are members of the Drafting Committee here who are deputising for the Honourable Dr. Ambedkar. I think that our requirements are fairly met. I hope this will satisfy the House.

Shri Lala Raj Kanwar (Orissa States): Sir, as a back-bencher and as one who has generally been a silent Member of this House, I crave your indulgence and the indulgence of this august Assembly to make a few observations for what they are worth. My observations, if I may say so, will be confined to only one aspect, albeit a very important aspect, of the problem that we are called upon to tackle, namely the question of national language.

Mr. Vice-President: It is for you to consider whether a detailed examination of that is necessary now.

[Shri Lala Raj Kanwar]

repository of concentrated wisdom and divine knowledge, and about which the great German Philosopher Schopenhauer said that "in the whole world there is no study so elevating as that of the Upanishads, which has been the solace of my life and which will be the solace of my death", it is written:

यन्मनसा ध्यायति तद्वाचा वदति याचा वदति तद कर्मणा करोति यत् कर्मणा करोति तदभि संपद्यते ॥

As one thinks from the mind, so he speaks from the mouth;
as one speaks from the mouth, so he acts;
as one acts, so he becomes. That is, the deeds proclaim the man.

Language is the outward expression of our innermost thoughts and a common national language is a prime necessity as it makes for unity and cohesion in a manner in which no other single factor does. As in the case of redistribution of provincial boundaries, there is an outcry in favour of some of the provincial languages struggling for supremacy. This is only natural but there should be no antagonism between one language and another. Whether the provinces should be formed on linguistic basis or some other basis or should be left intact has nothing to with the question of national language—the *lingua franca* of the country. That the Government of the day can give a great lead in this matter goes without saying. Witness the case of English which under the domination of our late foreign masters practically became the *lingua franca* throughout the length and breadth of this vast country. But in order to be the national language it should not only be the language of the intelligentsia but of the common people. It should be a language which should be spoken and understood by all classes of people and by the majority of them. Considering the huge population of India we find that of the provincial languages such as Bengali, Marathi, Gujarati, Punjabi, Telugu or Oriya, none of them is spoken or understood by the great majority of the people of India and the only language that can lay claim to a great extent to this position is Hindi which is spoken not only in Upper India but in C. P., Rajputana, Bihar and various other tracts. But the spoken Hindi is not the Sanskritised Hindi of Scholars and the intelligentsia—for after all what is their persentage as compared to the huge population of the country—but a Hindi full of, short, sweet and simple words, the pure, chaste and unadulterated Hindi spoken by the great majority of the people and which the uneducated people, the womenfolk and the children make full use of and speak freely and frankly. Although Sanskrit is the mother of most of the Indian languages —the languages not only of India but also of the World—and although it is the language *par excellence* in which our Vedas, Upanishads, Shastras, the Ramayan and Mahabharat and the Immortal Gita are written and although in the words of Sir William Jones, the great Orientalist, "Sanskrit is more perfect than Greek, more copious than Latin and sweeter than Italian", still it is not the language of the common people and so it is not desirable that we should draw upon it for our daily requirements in Hindi. Moreover Sanskrit has been a dead language for several centuries like Latin, Greek and Hebrew, and in spite of the marvels of the marvellous and inimitable Ashtadhyayi of Panini, the greatest Grammarian of the world, Sanskrit is most difficult to learn. The test of a national language should be its simplicity, and that it should be easily understood by everybody in the country. Now nobody can deny that th Sanskrit Alphabet is the most perfect and scientific in the World and it is a very natural and not unlike the alphabets of other languages. For exan the very first letter of its alphabet is अ . The mouth automatically when you have to utter this and the sound represented by it is the ve sound which one hears when the mouth is opened. Similarly whe

letter of the Sanskrit alphabet, that is म is uttered the mouth is automatically shut, which means that it is rightly the last letter of the alphabet, although I do not forget that म in a sense is not the last letter of the Devanagri alphabet because it is followed by other letters like य र ल व but they are variations of other letters. For instance य is a variation of इ , र is a variation of ऋ is a variation of ऌ , व is a variation of उ On account of the perfection of the Sanskrit alphabet, Hindi which is spoken by the great majority of the people in this country, should when reduced in writing, be written in Devanagri script (*Cheers*). Sometime ago a move was made to evolve what is known as basic English. If some such steps could be taken with regard to Hindi, it would be much easier for other people who do not at present speak Hindi or write Hindi to learn it in the minimum of time. In view of the position hitherto and at present occupied by Urdu written in the Persian script and in view of the fact that it is the language generally used by our Muslim brethren who number nearly 3½ or 4 crores in this country and who are scattered throughout the length and breadth of this country, and in view of its intrinsic merit that its script is a sort of shorthand, I think it is desirable that we should pay some attention to Urdu also but of course it can never be and there is no reason why, it should be the primary language of the Nation. The national and official language should of course be Hindi written in the Devanagri script but the second language should in my opinion be Urdu because it is a sort of shorthand and takes much lesser time to write and occupies much lesser space than other languages. For example take the word 'Muntazim' which in Urdu is written as if it were one compound letter, but if you write in Hindi in Devnagri script or Roman English it will consist of 7 or 8 distinct letters. Similar instances are 'Muntazir, Muntashir, Muntakhib' and hundreds of other similar combinations of letters which at present form unitary words. So I think that in view of the fact that Urdu is at present spoken by an appreciable number of people in this country and especially in big cities like Delhi, Agra, Lucknow and other places, and the countryside round about Delhi, and other large centres of population in Northern India and it possesses certain advantages in asmuchas it is a sort of shorthand, I submit that we hould treat it as the second language of the country. Moreover, if we adopt it as a second language, it will be a gesture of good-will towards the Muslim population who, as I have already said, number no less than 3½ to 4 crores. And in a secular State we will do well to make such a gesture. However much we may feel the consequences of the partition and the holocaust that followed in its wake we should take a realistic view of things, for after all we cannot build on anger, vengeance or retribution. Although I happen to represent a distant part of India at the moment, namely the Orissa States, I am a Punjabi, and like most Punjabis have suffered grievously in a variety of ways on account of the partition, but that should not make me forgetful of our duty towards the country. We should also not forget that the Father of the Nation during his life-time freely and unreservedly expressed himself in favour of Hindustani, and in expressing this opinion he was never depressed; on the other hand he was always impressed with the reality of the situation and the necessity and the correctness of this view.

One other suggestion that I should like to make in all humility is that in framing our Constitution we should invoke God's blessings as is done by every householder when he performs some big ceremony or when some great *Yajna* has to be performed. And what greater *Yajna* could there be than this in the new India that is born after so much travail? I therefore suggest that at the commencement of the Constitution we should say that we invoke God's blessings in this holy task, and at the end of the Preamble also we should use some such words as "So help us God". At a time of great trial facing his

Shri Lala Raj Kanwar

country Rudyard Kipling devoutly wrote:

Lord God of gods,
Be with us yet,
Lest we forget, Lest we forget.

I trust this suggestion of mine will be considered by this Honourable House.

Before I resume my seat I should like to add my tribute to the chorus of praise showered on the Honourable the Law Minister, Dr. Ambedkar, Chairman of the Drafting Committee, for the excellent speech made by him while moving for the consideration of the Draft Constitution. For lucidity and clarity of exposition and expression it could hardly be surpassed. Both he and his co-adjutors are entitled to our best gratitude for the very strenuous work they have done in preparing the Draft Constitution. Sir, I thank you for giving me this opportunity of making my submission.

Shri Yudhisthir Mishra (Orissa States): Mr. Vice-President, Sir, I have been called upon to speak at this fag-end of the morning session and I shall try to finish it as soon as possible. I want to submit a few points for the consideration of this Assembly. The first thing is that in the whole of the Draft Constitution there is no provision for the economic independence of the country. So long we had been fighting for the political independence of the country, and times without number, our leaders have said that we shall try to establish in this country such a Constitution as will provide for the economic independence of the country. But I am sorry to say that nothing of the kind has been done. There is nothing for the common people to be secure about their future. There is nothing in this Draft Constitution which provides them full opportunities for their growth in the future. The Constitution should firstly provide that all the lands, machinery and all other means of production and products thereof will be owned and controlled by the State in the interests of the people.

Secondly, the State should provide for every man and woman work according to his or her capacity and ability and supply the people with materials and goods according to their needs and requirements.

Thirdly, the production of goods should be determined and regulated according to the needs of the people. The Draft Constitution does not give any guarantee for the nationalisation of the wealth within a reasonable time; and it does not say anywhere that every man and woman should be provided with work in this country.

The second submission I would like to make is about civil liberty. The Draft Constitution provides that a person can be detained without trial in the interests of the state. I do not understand what is meant by "in the interests of the state". You have been seen, in the last few months, from January and thereafter, what is meant by detention without trial. In the various High Courts it has been held that the detention which has been ordered by the various Provincial Governments was in some cases illegal. When there is the law of the land to be applied to different individuals, I do not understand why there should be any provision at all for detention without trial. We fought against this during the time of the British Government, and I do not see any reason why this provision should be retained now also. Of course this principle has been agreed to by this Assembly while adopting the principles for the Constitution. But I would submit that this view should be changed and that the provision which has been given a place in the Draft Constitution should be amended

The third submission I would like to make is about States, the Rulers of which have ceded their jurisdiction and power to the Central Government. The provision which has been made in the Draft Constitution is beyond the terms of reference given to the Drafting Committee. I do not understand why the Drafting Committee has gone beyond the terms of reference and has gone beyond the wishes of the people of the States who have

come under the administration of the Government of India, and adopted a Constitution which is not at all demanded or liked by the people of the States. I would therefore say that Article 212 which has also been applied with respect to the States who have merged with the Provinces should be amended and that the wishes of the people should be respected in that regard. Of course, in due time the amendments will be moved, and I hope the House will accept the same.

With these words, Sir, I command the Draft Constitution for the consideration of the House.

Mr. Vice-President: I am glad to announce to the Honourable Members that the President has agreed that in deference to the wishes of the House, we shall have another day, that is Monday, for general discussion.

The Assembly then adjourned for lunch, till Three of the Clock.

The Assembly re-assembled after lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Shri H. V. Kamath: Will you be so good as to direct that.....

Mr. Vice-President (Dr. H. C. Mookherjee): Will the Honourable Member kindly resume his seat?

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following member took the Pledge and signed the Register:

Shri Ratna Lal Malaviya (C.P. and Berar States).

MOTION *re* DRAFT CONSTITUTION—*Contd.*

Mr. Vice-President: We will now resume the debate.

Shri H. V. Kamath: Will you be so good as to direct that a copy of Dr. Ambedkar's speech introducing the Draft Constitution be supplied to every Honourable Member with the least possible delay?

Mr. Vice-President: I understand that the speech of the Honourable Dr. Ambedkar will have to be cyclostyled. This will be done as quickly as possible and possibly copies will be made available to the Members either this evening or to-morrow morning.

We will now resume the debate.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President.....

Shri B. Das (Orissa: General): Are you allowed to speak twice on this motion?

Prof. Shibban Lal Saksena: No. Formerly I spoke on the amendment of Seth Damodar Swarup. I have not yet spoken on the motion moved by Dr. Ambedkar.

Mr. Vice-President, we are today called upon to discuss the principles underlying our Draft Constitution. To begin with, I must congratulate the learned Doctor who has placed this motion before us. I have read the speech, which he delivered, several times and I think it is a masterpiece of lucid exposition of our Constitution. I certainly think that there could not have been an abler advocacy for the Draft Constitution. But I would like to say something about the principles incorporated in the Constitution.

Sir, this Draft Consitution has accepted, as he himself said, the democratic Government of England as the model and has rejected the American system of Government. I personally have tried to compare both and to weigh which is better. I personally think that our country's need at present is for a stable State. I think what we require first is stability of Government. I therefore think that we should have opted for the system which prevails in America. A President elected by adult suffrage should be in charge of the Nation and he should have the right to choose his executive to carry on the administration, and the judiciary should be independent of the executive. I personally think that stability of Government is the first need of the Nation to-day. There are already tendencies which are fissiparous. There is the demand for linguistic provinces and for re-distribution of the provinces. We have also seen quarrels about the division of powers between the units and the Centre. All these tendencies are natural. But if we had modelled our Constitution on the American example and had adopted their system of election, I think it would have met our needs better. Therefore, in one fundamental respect I beg to

differ from Dr. Ambedkar who has opted for the British model. The British system works admirably. But that is the result of seven hundred years' experience and training. Besides, I think there are two special features of British life which enable them to keep their system going. There are no fissiparous tendencies and the loyalty to one King is a strong binding force. Secondly, in every Englishman, respect for his Constitution is ingrained. In our own country, I personally feel that the American system would be better. There will be less corruption and we can grow to our full stature much better under that system than we can do under the system recommended.

Then, Sir, Dr. Ambedkar has criticised the system of village panchayats which prevailed in India and which was envisaged by our elders to be an ideal basis for our Constitution. I was just now reading Mahatma Gandhi's speech in the 1931 Round Table Conference in London. He was speaking about the method of election to the Federal Legislature. There he recommended that the villages should be the electoral units. He in fact gave fundamental importance to the village republics. He said that it was in villages that the real soul of India lived. I was really sorry that Dr. Ambedkar should express such views about the village panchayats. I am certain that his views are not the views of any other Members of this House. Let us see what Dr. Ambedkar has said about these village panchayats:

"Their part in the destiny of the country has been well described by Metcalfe himself who says :

> 'Dynasty after dynasty tumbles down. Revolution suceeds to revolution. Hindoo, Pathan, Mogul, Maharashtra, Sikh, English, are all masters in turn but the village communities remain the same. In times of trouble they arm and form themselves. Any hostile army passes through the country. The village communities collect their cattle within their walls, and let the enemy pass unprovoked.'

Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them? That they have survived through all vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism and a den of ignorance, narrow-mindedness and communalism. I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit."

I am certain that a very large majority of the House do not agree with this view of village republics. As one who has done work in villages and has experience of the working of Congress village panchayats for the last twenty-five years, I can say that this picture is purely imaginary. It is an entirely wrong picture. I personally feel that, if we bring to these village panchayats all the light and all the knowledge which the country and the world have gathered, they will become the most potent forces for holding the country together and for its progress towards the ideal of Ram Rajya. In fact, the Soviet Constitution is based on village units, village Soviets as they are called. I feel personally that these village republics, like the Russian village Soviets, can become models of good self-government. I think that the Constitution should provide for the establishment of village republics.

The Upper House under this Draft Constitution is to be elected indirectly by provincial legislatures. I think it should be elected on a wider franchise and village panchayats should be required to elect the Upper House. The suggested method of electing the Upper House by provincial legislatures is a very wrong method. If village panchayats are allowed to elect the Upper House, we will have a more representative Upper House. I personally feel that unless we give the villages more responsibility, we cannot really solve their problems.

[Professor Shibban Lal Saksena]

The third point I want to touch upon is States. I fully agree with Dr. Ambedkar in his criticism against having two kinds of constitutions, one for Indian States and one for provinces. I feel that the States should be made to fall in line with the provinces. I hope that the States' representatives here will see that it will be more advantageous to have constitutions for the States similar to those for the provinces. Instead of Governors, they can have Rajas as constitutional heads. Most of the smaller States have already merged themselves with bigger units. Where they are very small, they have already merged themselves with provinces. I feel that the Constitution should have a provision that, if any State wishes to fall in line with the provinces, the provincial constitution shall apply to that State also. I hope that by the time the Constitution is passed, most of the States will agree to fall in line with the provinces.

Then, Sir, about the fundamental rights, Dr. Ambedkar said that nowhere in the world are Fundamental Rights absolute. I personally feel that our Fundamental Rights should be in more unambiguous form. I think there is much force in the contention that the provisos to these Fundamental Rights take away much of the rights granted by the Constitution. I think that these Articles should be modified.

Then, Sir, one word about our national language. I think there should be a separate clause stipulating a national language on the model of the Irish Constitution. I personally feel that it should be Hindi written in Devanagri characters. Similarly I think the form of the flag should also be provided for in our Constitution: what colour it shall be and what its dimensions should be, should all be declared in the Constitution. I also quite agree with Seth Govind Das when he said that cow-slaughter should be banned in the Indian Union. I personally feel that the sentiment of thirty crores of population should be respected. I feel that we should provide in one of the Articles of this Constitution the banning of cow-slaughter. I feel that after all we have to take the people as they are and we will have to respect their sentiments also. I therefore feel that this Constitution should be amended to suit our needs and requirements.

Lastly, Sir, I thank the Drafting Committee for providing us with a very fine Constitution. I also feel that the suggestions that I have made will be discussed at the amendment stage and finally find a place in the Constitution of our country. Sir, with these words, I commend the motion to the House.

Shri Sarangdhar Das (Orissa States): Mr. Vice-President, Sir, like all the previous speakers I congratulate the Drafting Committee, and especially its Chairman, Dr. Ambedkar for the hard work that they have put in. But at the same time, there are certain things in his speech with which I cannot agree. When he says: "What is the village but a sink of localism and a den of ignorance, narrow-mindedness and communalism?" I am rather suprised that a respected member of this House and also a Minister of the National Government should have such an idea about our villages. I must say here, that with the spread of western education in our schools and colleges we had loss contact with the villages, and it was our leader, Mahatma Gandhi, who advised the intelligentsia to go back to the villages, and that was some thirty years ago. For the last thirty years we have been going into the villages and making ourselves one with the villagers; and in reply to Dr. Ambedkar's accusation, I would say that there is no localism in the villages. There is ignorance,—yes, ignorance of the English language and also our various written languages, and that situation is due to the kind of Government we had, a Government that destroyed our educational system. As far as knowledge of nature and wisdom gathered from Shastras and Puranas are concerned, I would say that there is more wisdom and more knowledge in the villages than in our modern cities.

I am not a hater of cities. I have lived in cities in two continents, but unfortunately our cities in India are entirely different from the cities in other countries. Our people living in the cities are far away from the villagers, from their life, and that is why we have become such that we think there is nothing good in the villages. Now this idea is changing; I do not know if it is changing outside the Congress circles, but I am positive that within the Congress circles, the idea of the villages is uppermost in everybody's mind. I shall therefore appeal to Dr. Ambedkar to reconsider this matter and to give the villagers their due because the villages in the near future will come into their own as they used to be.

Now then when we come to the Draft Constitution itself, I am at one with Dr. Ambedkar in the matter of more power to the Centre, because a strong Centre is very necessary at the present time. No matter what we say about the fundamentals of the culture of our peoples in different provinces being the same, we are a heterogeneous people; and taking advantage of the situation that the British have gone, there are all kinds of disruptive elements trying to raise their heads, and therefore it is essential that the Centre must be strong, so that all the different peoples of the country can be welded together into one nation. In this connection, I would urge upon you to keep this idea of linguistic provinces in abeyance for, say, five or ten years, because although I come from a province where we also think that injustice has been done to our province, nevertheless because of this linguistic provinces idea during the last one year, there has been more bitterness between the peoples of neighbouring provinces than anything good. And this is not the time to have bitterness. We want goodwill between the neighbouring provinces and that is why I would strongly urge that this linguistic provinces idea should be kept in abeyance for at least five years. As regards language, I know and every freedom-loving man in any country knows that there must be a national language. In that respect also, we have different provincial languages some of which have developed very much and are of a very high order, while there are others which are backward. So, there is a competition between the different provincial languages. But, we must remember that we must use a language that the majority of people speak or understand. There is no language other than Hindi that can stand this test. Hindi is a language based on Sanskrit. Because in the different provinces we study Sanskrit to some extent, although not as fully as the older generations used to do, our regional languages also are based on Sanskrit, our Sadhu Bhasha as we call it in my province, that is, the scholarly language is such, that I believe, this scholarly language spoken in Orissa can be understood by the Hindi people or the people from the Punjab and they do understand it. So also, the Oriyas understand Hindi though they may not be able to speak it. The same is the case in Bengal, Maharashtra, etc. When we look at it from that point of view, I am rather surprised that other non-Hindi-speaking friends, particularly in South India consider that the demand for adopting Hindi as our national language is "imperialism of language". I do not see where there is imperialism of language. If the South Indians can speak in no other language than English, do they mean to say that the millions of people living in the Madras Province understand English? It is only a few, and a few of the uneducated people in the cities also who understand English; but not in the villages. We will have to banish English; but at the same time, I would say to the advocates of Hindi that it cannot be done right away, immediately. Some time must be given to the people of South India and other non-Hindi speaking provinces to get acquainted with Hindi and to make their contacts with North India and Western India in the national language.

The next point I want to dwell on is the Indian States. When we first considered the principles of the Constitution, some ten months ago, the

[Shri Sarangdhar Das]

Indian States were in a different position. Since then, things have changed. I cannot see how we shall have units of Indian States and of provinces, and call them all units, and yet, the Indian States are not on a par with the provinces. Particularly I see, that the High Courts of the Indian States will not be under the jurisdiction of the Supreme Court. It is said in the Chapter on Fundamental Rights that these rights are guaranteed to every citizen in India. I take it that a person, man or woman, living in an Indian State or in a Union of States as they have been formed during the last few months, is a citizen of India and if his Fundamental Rights are curtailed by the Government there, there is an appeal to the High Court and that is the final judgment, while in the provinces, the matter can go up to the Supreme Court. I do not see how the man or woman in the States is on a par with the man or woman in the provinces.

Then there are various other matters that exist in many States, particularly in Rajputana and Central India, where there are Jagirdars who own practically 75 to 90 per cent of the land under the Maharajas of Jaipur, Jodhpur and Bikaner; there is an inland customs duty collected by the Jagirdar from the producer, and then again by the Maharajas' Government, and then when the goods are exported to the neighbouring State, that State also levies an import duty. I can give a particular instance of cotton grown in Jaipur, paying two duties in the Jagirdar's territory and while going out of Jaipur, paying another import duty in Bikaner, when exported to Bikaner, where there is no cotton grown. These matters will have to be changed and the earlier they are changed, the better it is for the primary producer as welle as the consumer and also for the expansion of trade and commerce.

Then there is another matter and this is the last one that I want to stress, that is the tribal population in the various States that have come into the provinces, particularly in Orissa and the Central Provinces. It is the duty of the Union Government to improve their standard of living, and to give social and economic amenities to all the people. These tribal people, unfortunately, have been in a very backward condition as far as education, sanitation and economic status are concerned. There are about twenty lakhs of tribal people in Orissa and about 15 lakhs in the Central Provinces. For the quick advancement of these fellow citizens of ours, it will be necessary to allot large sums of money from the Centre, because the provinces cannot bear such heavy burdens. In the matter of financial arrangements between the Centre and the provinces, it will be necessary, when there is any *per capita* allotment on population basis, for the purposes of the tribal people, the amount must be four or five times the ordinary allotment allowed for the non-tribal people. I press this point particularly, because, if we are to improve their status in the quickest possible time, it is necessary to spend more money whenever it is needed and wherever the people are backward.

Chaudhari Ranbir Singh (East Punjab: General): *[Mr. Vice-President, while supporting the motion of Dr. Ambedkar I would like to submit a few words to this House. I agree with Seth Govind Das that it would have been better if we had decided upon our National Anthem, National Flag and National Language in the very beginning. With reference to what Shri Maitraji said yesterday, I admit that we cannot expect our Deccan friends to speak in Hindi and to use it for the business of the House all at once. But there would have been one advantage if the problem of the national language had been settled in the very beginning—and even now the advantage would accrue—

* [ ] Translation of Hindustani speech.

and it would have been that people would have come to know which language was to be their national language and which language they should seek to learn.

I would not like to go deep into the question of centralisation and decentralisation of power, but I would like to draw the attention of the House to one matter. Mahatma Gandhi, the Father of the Nation always taught us that whether in the political or in the economic sphere decentralisation engenders a power which is much greater than other kinds of power. Besides, there are other reasons also for this view. I am a villager, born and bred in a farmer's house. Naturally I have imbibed its culture. I love it. All the problems connected with it fill my mind. I think that in building the country the villagers should get their due share and villagers should have their influence in every sphere. Besides there is another matter to which attention was drawn this morning by Babu Thakur Dasji. It is that the distinction between rural and urban seats should be done away with. I have no doubt that if we take a long view of the matter it would be beneficial for the rural areas—and more specially in a country like India where there are seven lakhs of villages and only a few cities. But we cannot ignore the conditions of today. Howsoever ingeniously we may try to beguile them with subtle arguments and fine sentiments the village people cannot be blinded to the fact that the power of the Press and the Intelligentsia is centred in the cities alone, and that they of the villages have little say in the affairs of the nation. It is no use, therefore, to ignore this reality. Today a distinction has to be maintained in our country between the rural and urban seats. In fact reservation of seats is to be provided and it should be provided, for those who are backward. The reservation provided in our Constitution is rather a peculiar one. We should remember what used to be emphasised by the Father of our Nation, Mahatma Gandhi, that is, the means for achieving an end have to be very carefully scrutinised, for the end is conditioned by the means. Our aim today is to set up a secular State—a non-denominational State. I cannot therefore, see any reason why seats should be reserved for minorities or sectarian groups. I do not see any sound reason for the adoption of such a course of action. Would not its adoption defeat the realisation of Ideals we have in view? Our object of establishing a secular State in this country would remain merely an unrealised dream if we decide to provide safeguards on grounds of religion. The training, the level of education, and the power of the followers of Islam do not need any further demonstration in the circumstances prevailing in the country to-day for we have already had ample proof of the same.

We have seen that by the power of their organisation and with the help of a foreign power they brought about the partition of the country. The other minorities that have already been referred to are not less powerful. We cannot from any point of view call them backward communities. It is no doubt true that it may be said, if it can be said for any group at all, that Harijans constitute a backward class. Both from their educational and financial conditions they may be called a backward class. But even in this respect we have to keep in view one other consideration. It is that if we provide in this Constitution safeguards for Harijans, the word 'Harijans' would be perpetuated even though such is not our intention. We want to form a classless society in the country. But a classless society cannot be formed if we make a provision for reservation of seats on the contrary. This would only perpetuate the word 'Harijan'. In my opinion there is another way and a much better way of providing safeguards for them. All the backward people in the country are either peasants or labourers. All such people were disfranchised in Russia as did no manual work and lived not by their

*[ ] Translation of Hindustani speech.

[Chaudhari Ranbir Singh]

labour, but on the returns on their capital. We may not disfranchise such people in our country today. We may even give them rights according to their numbers. But we should provide safeguard for manual workers, the peasants and the wage-earners. If safeguards are to be provided they must be only for those who are peasants and wage-earners and in fact safeguards can be properly provided for them alone.

There is one thing more. As I said before, it may perhaps be objected that this will give rise to another serious problem, that is to say, the words 'peasant' and 'labourer' will find a permanent place in the Constitution. But I think that, even if this happens, it will not be in any way injurious to anyone. It will be all the better that the people of the whole country would be labelled as peasants and workers. If every one would earn his bread by labour, it would be the best thing for the country and the problems of food and cloth with which the country is faced today would then be solved easily.

I would like to proceed to make one more observation and this I may do only as a peasant. It is with respect to the protection of the cows. Pandit Thakurdass Bhargava and I had jointly moved a resolution on slaughter of cows in the Congress party and at that time it was unanimously adopted. But unfortunately no mention of it has been made in our Constitution. Though the same was the case in regard to Hindi on which question also the party had come to a decision, yet the mention of Hindi is to be found in the Draft while no mention has been made of the resolution as regards cow protection. I humbly submit that that resolution should be carried out as a whole—rather it should be enlarged as follows:

"In discharge of the primary duty of the State to provide adequate food, water and clothing to the nationals and improve their standard of living the State shall endeavour :—

(a) as soon as possible to undertake the execution of irrigation and hydro-electric projects by harnessing rivers and construction of dams and adopt means of increasing production of food and fodder.

(b) to preserve, project and improve the useful breeds of cattle and ban the slaughter of useful cattle, specially milch and draught cattle and the young stocks."

Sir, I would like to make one more point in regard to the economic order. I have no objection, rather I am happy that the Centre should be very strong. But I consider it my duty to submit that the finances of the provinces should be on a sound basis. Today there is not a single pie of the income of the peasant who earns it by his sweat and blood, which is not taxed. If he cultivates even a single bigha of land he has to pay a tax on it. As compared to this even an income of two thousand rupees of other people of India is not taxed. This is a great injustice to the peasant, particularly in a country where they dominate and have a large population. It should rather be considered how the continuance of this injustice in a country of peasants would look like? Therefore I want that the provincial governments should realise land revenue on the same basis as the income tax; for this purpose their finances should be strengthened.

I would like to make one more observation as a Punjabi. Punjab was partitioned as a consequence of the Freedom of India and partition completely dislocated the entire administration of this Province. To bring it again into line with the other provinces it is necessary that at least for the next ten years, in so far as its finances are concerned, special concession should be shown to East Punjab.]

Mr. Vice-President: I have received a number of communications from Honourable Members suggesting that the House might be adjourned as they want to go to the Exhibition. I want to know the views of the House.

Honourable Members: Yes, it may be done.

Mr. Vice-President: I have got the names of sixty gentlemen who wish to speak. The adjournment will mean that only a smaller number will be able to speak because there is only one day left. It is for the House to decide what they want.

An Honourable Member: We might adjourn at half past four.

Another Honourable Member: Let it be four o'clock.

Mr. Vice-President: We will carry on up to a quarter past four.

Shri R. R. Diwakar (Bombay: General): Mr. Vice-President, Sir, Honourable Members who have spoken before me have covered enough ground and I think I should not take much time of the House in going over the same ground. I would like to make a few points which from my point of view are very important when we are on the eve of giving a new Constitution to our country. One thing which I wish to make quite clear is that the Draft Constitution which is before us is really a monumental work and we all of us have already given congratulations to the Drafting Committee and its Chairman who is piloting it through this House. At the same time I would like to point out that the Drafting Committee has not only drafted the decisions of the Constituent Assembly but in my humble opinion it has gone far beyond mere drafting. I may say that it has reviewed the decisions, it has revised some of the decisions and possibly recast a number of them. It might be that it was inevitable to do so under the circumstances, but at the same time we, the Members of the Constituent Assembly, should be aware of this fact when we are considering the Draft and when we are thinking in terms of giving our amendments.

The second point I want to make is about the hurry with which some people want to finish the discussions about this Draft. I do not think that much hurry will be beneficial in going through the Draft. Enough time should be allowed, and none of the amendments that may be given should in any way be suppressed or insufficient time given to them. Enough time should be given for the discussion of important things. If not for anything else, I want to point out that it is more than one year since Free India is in existence, and this year has been one of rich experience. This experience itself, I think, should make us pause and think about changing a number of provisions that are there in the Draft, as it is today before us.

Let us take the question of adult franchise. A number of us are already thinking as to whether we shall have the required type of people in the legislatures if we straightaway introduce adult franchise. I am one of those who would suggest that while we should keep adult franchise as it is, so far as the electorate is concerned, we should consider and put our heads together and see if the qualifications of candidates are, in a way, such as would bring to the legislatures people who would really be capable of shouldering their responsibilities. No doubt it is a superstition with western democratic method that each one who has a vote is also eligible for becoming a candidate. But I do not think that it is absolutely necessary for the purposes of democracy to follow this tradition of western countries. We can as well think about the important consideration that we want a legislator who is not merely a representative but also a representative who can legislate and who has a certain perspective. While we are speaking in terms of nationalism, unitary government, strong Centre etc., all these words would be useless and meaningless if we do not have in our legislatures people who have this perspective and who can look upon every piece of legislation with this perspective and in this context. The Constitution, after all, draws its force from the people who work in and if we are not able to send to the legislatures people who can understand, who can grasp the spirit of the whole Constitution, I think

[Shri R. R. Diwakar]

it would be very difficult to work it for what it is worth. I want to point out that there are some more considerations of this type which experience has brought home to us during the past one year, and they should stand us in good stead in considering the Draft that is before us.

Another important point which has been harped upon from this platform is about linguistic provinces and the question of language. The battle of languages has been or is being fought almost from day to day—it comes up in a number of dubious ways. But I think that when once we have all agreed that there should be a *lingua franca*, a national language, I do not think that we should quarrel any more about details and emphasise unnecessarily the point that our Constitution itself should be in that language. With due respect to the Hindi language—or Hindustani or whatever we may call it—I should say that it has not yet developed the connotations, that are necessary for its free use in legalistic and constitutional works as well as constitutional methods and interpretation. Therefore, it is absolutely necessary that we should wait a little more before we rush in that way. I would plead that we should pass the Constitution in the English language and we should also have a good Hindi translation of it, but so far as an authoritative version is concerned, for the next few years the English one should be that authoritative version. That, of course, is my humble opinion.

Now, the old hatred or rather the dislike for the English language must really lapse with the 15th of August 1947. Before the 15th August 1947, we were using the English language as slaves, and therefore we ought to have felt the revulsion that we were feeling. But today, it is out of choice, out of the merits of that language possibly, out of the difficulties of the situation, on account of the heterogeneous languages which so many of us speak that we take to it, we rely on it for some period; and that I think should be the best way of doing things. It is from the point of view of arriving at the highest common measure, what may be called the highest common factor, that we ought to look at this problem; then I hope we shall be coming to a very good conclusion and a harmonious one.

Now about linguistic provinces. The question is before the Commission that has been appointed by the President of our Assembly; it is premature to say anything about it. Really speaking, I wish that none had referred to it from this platform. But since it has been referred to, I should think that this question should not in any way be shelved or postponed since this Constituent Assembly is there; and since we are considering the whole future of the country as well as of the Provinces, it is no use simply brushing it aside saying that there are difficulties in the way. If there are difficulties, well, we are all here to see that those difficulties are removed. I do not think that there are insuperable difficulties which we cannot overcome as a nation. We have overcome greater difficulties, possibly we shall have to overcome far greater difficulties in future, and at such a time it is necessary that each limb of the nation, each group in the country, feels that its future is assured, that its development is assured and that there is no danger of its being suppressed or neglected in the future Constitution of India.

Sir, I once more urge that we should not be in a hurry about this Constitution—it might take a few days more or a few days less. I would urge you to take fully into consideration the experience that we have had during the whole year and bring that experience to bear upon the provisions of the Draft Constitution that we have before us.

With these few remarks, I commend the Draft and congratulate once again the Drafting Committee and its able Chairman and on the way in which he has presented this Draft to this House.

Shri Himmat Singh K. Maheshwari (Sikkim-and-Cooch Behar): Mr. Vice-President, Sir, the House has during the past two days heard some very vigorous and useful criticisms on the Draft before it. It is not my intention to repeat or to paraphrase any of the suggestions that have been made. I shall permit myself to make only one general comment and to make one appeal.

The general comment that I wish to make is that the Draft tends to make people, or will tend to make people, more litigious, more inclined to go to law courts, less truthful and less likely to follow the methods of truth and non-violence. If I may say so, Sir, the Draft is really a lawyers' paradise. It opens up vast avenues of litigation and will give our able and ingenious lawyers plenty of work to do. Whether this will help the nation as a whole, is extremely doubtful.

Many of the provisions of the Draft confer benefits or concessions of a somewhat illusory character. Some of them, in my opinion, are even harmful. The question then is: what is this blemish due to? I shall hazard an answer: the answer is that the raw material out of which this Draft has been made is all foreign. The ideas are foreign, the garb is foreign, and what is more, the form is top-heavy. With these disadvantages I am afraid it was not possible to do much better than what the Committee has done. Whether at this stage it will be possible to remove these defects I am unable to say. But I wish to put in a strong plea that when the Draft is examined clause by clause by the House, every effort should be made to expunge all unnecessary provisions and provisions which might more conveniently be left for legislation by the Dominion Parliament in future.

The appeal which I wish to make to the House is in connection with a subject which has been touched upon by a number of speakers today and yesterday. It is in connection with reservation of seats in the legislatures for the minorities—Muslims, Sikhs, Scheduled Castes and others. My friend Mr. Karimuddin sounded a very healthy note yesterday when he opposed reservation of seats for Muslims. From my personal experience in the State which I represent, I am able to say that the refusal to grant separate electorates and the refusal to grant reservation of seats in the legislatures to Muslims during the last 25 or 30 years has had the most beneficial results in my State. The result has been that Hindus and Muslims have always been on the most friendly terms and have, even during the troublous times of 1946, 1947 and this year, remained on the most friendly terms without breaking each others' heads. They co-operate in every field of life and are the best of friends. Reservations are bound to encourage separatism and postpone at least for some time the realisation of the dream which we have, namely, that of evolving a truly secular State. As long as any community demands and gets reservation of seats in the legislatures a truly secular State, in my opinion, must remain a distant dream. I therefore make a most earnest appeal to my friends of all minority communities to drop their claim for reservations voluntarily so that this Constitution may start off as a truly democratic, virile, strong Constitution without any drawbacks to begin with. One of our Sikh friends yesterday, as far as I could understand him, also put in a plea I believe against reservation. That is a very healthy sign. I have still to hear what the Scheduled Castes in this House have to say. Personally, Sir, I have always felt that giving any person the name of a Scheduled Caste involves a stigma.

(At this stage the bell was rung indicating that the Member's time was up.)

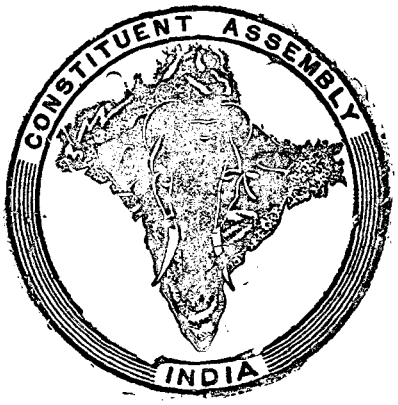
I bow to your call, Sir. I have said nearly all that I wanted to say.

Mr. Vice-President: The House stands adjourned till 10 o'clock on Monday, *the 8th November 1948.*

The Assembly then adjourned till Ten of the Clock on Monday, the 8th November 1948.

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CONSTITUENT ASSEMBLY DEBATES

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 8th November, 1948

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the pledge and signed the Register:

1. Mr. H. P. Mody (Bombay: General).

MOTION *re* DRAFT CONSTITUTION

Mr. Vice-President (Dr. H. C. Mookherjee) : It has been the decision of the House that we should close the general discussion today. There are about sixty names on my list and it is obviously impossible for me to give an opportunity.....

Many Honourable Members: We cannot hear you, Sir. Evidently the mike is not working.

Mr. Vice-President : It is obviously impossible for me to give an opportunity to every Member who wishes to speak. I have therefore decided to give Members of the minority communities the opportunity to speak first. Mr. Mahboob Ali Baig.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, Dr. Ambedkar's analysis and review were remarkably lucid, masterly and exceedingly instructive and explanatory. One may not agree with his views but it is impossible to withhold praise for his unique performance in delivering the speech he did while introducing his motion for the consideration of this House.

I am afraid, Sir, I am unable to agree with either the form of Government or the form of constitution embodied in the Draft Constitution or the reasons that Dr. Ambedkar gave in their justification.

Firstly, let me deal with the form of Government. Dr. Ambedkar's view is that the British parliamentary executive is preferable to the American non-parliamentary executive on the ground that the former is more responsible though less stable, while the latter is more stable but less responsible. I am inclined to think, Sir, that the advantages of the parliamentary executive have been exaggerated and its defects minimised. It is common knowledge—and from experience also we have found—that the responsible executive under which we have been working for the last two decades has pointedly brought to our attention the fact that a removable parliamentary executive is at the mercy of hostile groups in their own party. Very little time is left to the executive to achieve the programme which is before it. It is so unstable. It is always in fear of being turned out by no-confidence motions. Further, Sir, it is there that the seeds of corruption are sown. A corrupt party-man cannot be turned out by the electorate under the present Constitution or under the proposed Constitution. The Minister or Ministers have always to be very careful to satisfy the various elements in their party in all their legitimate and illegitimate demands. This is the opinion also, Sir, of the Commission that was sent out to India some time ago, called the Simon-Attlee Commission. It was clearly said that the Ministry is so much engaged in cajoling, in satisfying

[Mahboob Ali Baig Sahib Bahadur]

its Parliament that there is hardly time to look after its administration or to put into effect its schemes. That is a very serious defect. Further, I have heard several members of the party saying : " Well, we cannot vote according to our conscience. There is the Party Whip. God save us from this party system ". This is what has been expressed by many honest legislators. Further, Sir, as I said, there is no stability at all.

The third point I would like to urge against this parliamentary executive is that it cannot reflect the several sections of the country. The defects are so overwhelmingly great that I should rather prefer a stable Government, a government which does not stand in fear of being turned out overnight, because it was not able to satisfy some corrupt supporters of their party. Now, it is true in a democratic Government, the executive must be responsible. Let us see whether there is any other system of Government which has both responsibility and stability. It is no doubt true that in the American system there is less responsibility and more stability. But if you look at another system of Government, namely, the Swiss form of Government, where the elected parliament again in its turn elects the executive, there the responsibility is emphasized. Having elected its executive, it leaves the executive to work out its schemes in a satisfactory way for a period of four years and the decisions of the Parliament are binding on that executive, unlike in the case of the American Presidential executive. Therefore, if we want both stability and responsibility, the Swiss system of executive is preferable.

Now, Sir, with regard to the form of constitution, I am unable to agree with the constitution that is embodied in the Draft Constitution. People seem to think that the Centre must be strong, and that unless the Centre is very strong the provinces will always be an impediment in the way of the Centre becoming strong. That is a wrong view. If provinces are made autonomous, that does not necessarily mean that the Centre will be rendered weak. What do we find here ? My view is that the provinces will be nothing but glorified District Boards. Look at Article 275 where in an emergency all powers can be usurped by the Centre. Look at articles 226, 227 and 229. The Centre can legislate for the provinces in all matters; and again look at the long Union List and the Concurrent List. All these clearly show that in the hands of a Central Government which wants to override and convert this federal system into a unitary system, it can be easily done. Now there is a danger of this sort of Government becoming totalitarian. This is the danger in the form of the constitution that is embodied in the Draft Constitution. Now to add to this, look at the Fundamental Rights that are enunciated. Can they be called Fundamental Rights at all ? Fundamental Rights are those which are fundamental in character, unchangeable except in extreme circumstances. But what do you find here ? These Fundamental Rights are hedged in by provisos, by overriding exceptions. There is a little confusion also in that chapter that deals with Fundamental Rights. It is said that from experience, it is found that instead of a Supreme Court deciding whether the government cannot under certain circumstances override the Fundamental Rights, provision is made in the draft itself; and it is claimed, Sir, in the provisions for the form of constitution that it must be a flexible constitution. May I, with due respect to Dr. Ambedkar, state that the rigidity and the legalism which he says must be avoided are the very essence of a written constitution? It is not an unwritten constitution as in the case of Britain. In the case of Britain, Sir, it is a matter of history. It is an unwritten constitution and it has suited the peculiar genius of the British people to go on with their work without any written constitution and the peculiar parliamentary democracy suited the British Government. The very rigidity and the legalism which Dr. Ambedkar complained of is a necessary and unavoidable

characteristic of a written constitution. We do not want to be so flexible as to allow any Government to ride rough-shod over the fundamental rights. They are not written rights at all if they are hedged in by so many exceptions. What is stated as Fundamental Rights, in the very article they have been rendered useless. Further, with regard to these Fundamental Rights, it is stated in section 13 that nothing contained in this shall in any way affect the operation of the existing laws. You know very well how reactionary the existing laws have been. No doubt in Article 8 it is stated that all laws which are inconsistent with the Fundamental Rights must go, but in article 13 it is said that the existing laws must prevail as against the Fundamental Rights. Not only there is contradiction here but there is confusion. I could understand, Sir, if under Article 8 a list of Acts and their sections have been mentioned as well as those which have been annulled. That section does not make it clear. In these circumstances, Sir, I am afraid, there are no fundamental rights at all.

One thing with regard to minority rights I am bound to say. There is nowhere any mention of provisions which safeguard the personal law of the people. You know, Sir, in India, at least, people of several communities are governed by personal laws based on their religion. It is possible to legislate with regard to personal laws also. That would go against the claims that this government is going to be secular, which would not interfere with the religious rights of the people.

Sir, one word with regard to reservation. Some Muslim friends of mine, especially Mr. Karimuddin has stated that he does not want reservation for his community. But, when I had a talk with him, he clearly stated that when there are no separate electorates, the people who will be returned will be those put up by the majority community, and therefore, the Muslim candidates who really represent the Muslims may not be elected. That seems to be the reason why he did not want reservation. If we can find out a way by which the Muslims who are elected would truly represent their community, there should be no objection. If in case of minorities a device is found, for instance, the election being based on what is called proportional representation by the system of single transferable vote, if such a device is made by the party in power, by the persons responsible for the framing of the constitution, I think that might go a long way. In the absence of such a device, in the absence of separate electorates, I do not think I will be voicing the opinion of my community if I gave up this reservation that has been agreed to in the Minorities Sub-Committee. Therefore, Sir, I feel, on the whole, that this draft has not been very satisfactory. There is almost a certainty that this system of Government would lead to fascism or totalitarianism and it is capable of riding rough-shod over the valued rights of the citizens and also of the minorities.

Mr. Z. H. Lari (United Provinces : Muslim) : Mr. Vice-President, Sir, before making my submissions on the draft Constitution, I would like to lodge a protest. The Constituent Assembly refrained from taking any decision as to the language question, and had postponed its consideration to a future stage. But the Drafting Committee, of its own accord, inserted a clause laying down that Hindi and English shall be the languages for transacting the business of the House. In today's paper I saw a report that the Muslim members from the United Provinces and Bihar have agreed that Hindi with Devanagari script shall be the official language. I therefore think it necessary to repudiate that statement at the very outset, and say clearly that we stand for Hindustani written in either script as the national language of our motherland. So far as English is concerned, I think it is necessary to retain it for some years to enable those who are not acquainted with Hindustani to be able to take an effective part in

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the discussions in the House. An Honourable Member from Madras was right when he said that there should be no linguistic imperialism. For that reason, Hindustani written in either script along with English should be the languages used for transacting the business of the House.

Coming to the Draft Constitution, which is primarily intended to usher in a democratic secular republic, we have to see how far the contents, the form and the spirit of the provisions contained therein are calculated to promote the Objectives Resolution unanimously adopted by this House and universally acclaimed by the country. To assess the provisions of the Draft Constitution, we have to see how far the Draft Constitution ensures the inherent rights of man, rights without which life is not worth living, how far the provisions safeguard against possible prostitution of democratic forms for totalitarianism, how far the provisions ensure justice if not generosity for the minorities and lastly, how far they ensure the independent development of the various national elements in the country. In order to assess the value of the provisions, we have to bear in mind two things: firstly, certain admissions made by the honourable Mover of the Resolution, I mean the Honourable Dr. Ambedkar, and secondly our experience of the working of democracy in the last fifteen months after the attainment of independence. When the House adopted resolutions which are the basis of the Draft Constitution, we had no such experience before us; but now we have. The first admission that the honourable Mover made was, and I will use his own words: "Democracy in India is only a top-dressing on Indian soil, which is essentially undemocratic".....,"It is wiser not trust the legislatures to prescribe forms of administration." With respect, I say he is mainly right.

An Honourable Member: He is wrong.

Mr. Z. H. Lari: I would like to point out in this connection the various Security Acts which have been passed by the various legislatures, particularly the Safety Act in one province which even excluded the right to move the High Courts under section 491 of the Criminal Procedure Code. The second admission that he made is: "Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it."

I say not only the people but even our Governments have to learn it. To prove this I will cite only two instances. The House will remember that in Calcutta—in Bengal—the High Court was seized of a case and had appointed a full Bench to decide as to what is the effect of the word 'reasonable' in an enactment dealing with Government's power to arrest and detain. The Bench was to meet only next day but the Government came out with an Ordinance laying down that the word 'reasonable' shall be held to have been deleted. No doubt, as the High Court remarked in that case 'His Excellency the Governor of the Province' was fully within his rights to enact an Ordinance but it was against constitutional morality.' The second instance which I would place before the House is that the head of an autonomous institution—I mean the Aligarh University—was only the other day asked to quit and give place to another man although that head had the confidence of the University Court and of the community to which the institution appertains. I say therefore in assessing the value of the provisions we have to keep in view these two admissions made by the Honourable Minister, as well as the recent working of the democracies during the last fifteen months.

Now the first requirement of a citizen is there must be security of life and there must be safeguard of liberty. This august House when considering the Draft Fundamental Rights laid down that nobody should be deprived of life and liberty except in accordance with due process of law. Now those words have been substituted by the words 'procedure established by law'. That absolutely nullifies the intention of those who wanted this article to appear

in the Constitution. The moment you say that a person may be deprived of personal liberty and life "in accordance with procedure" it becomes open to the legislature to frame any legislation affecting life and liberty. That nullifies the very intention. Therefore the substitution of the original clause is absolutely essential. In the Introduction to the Draft Constitution reference is made to the Japanese and Irish Constitutions but those responsible for those constitutions had laid down the procedure itself. For instance it is laid down there that everybody arrested shall have the right to be given the cause of arrest and he will have the right to get it adjudicated by courts. Therefore so far as Japanese and Irish Consitutions are concerned, they have laid down the procedure and after laying down the procedure, the Constitution says 'Nobody can be deprived of life and liberty except in accordance with procedure as established by law'. I submit that the examples of Ireland and Japan have no relevance.

Next to individual liberty and life comes the sanctity of one's house. One's house has been said to be a citadel, and it is of sanctity for him. In all democratic constitution you will find that no searches or seizures can be made in the houses except on causes shown and on complaints specifying the reason thereof and thing to be seized. Similar articles should appear in our Constitution.

The next necessity of the individual is the right to have elementary education. That is singularly absent in the Fundamental Rights. In the Directive Principles of State Policy it is contained that it shall be the endeavour of the State to provide elementary education. My submission would be that that is absolutely insufficient. What is necessary is that it should be the duty of the State to provide elementary education and such a provision should exist in the Constitution among the Fundamental articles.

Now I come to Article 13 which refers to freedom of speech, assembly or association. These are conceded but have been hedged in by such provisos and conditions that they reduce them to a nullity. I think addition of the words 'subject to reasonable requirements of public order and morality' would be enough. The Honourable Mover said that in America these rights have been circumscribed by judicial decisions, but when judicial decisions circumscribing those rights are given, they are given out of necessities of State. I think the addition of the words 'subject to reasonable requirements of public order and morality' would do. I submit that Fundamental Rights as conceded in the Draft Constitution are indefinite, insufficient and in certain particulars, vague.

The next item I would like to bring before you is this. The twin principles of democracy are that everybody has a right to representation and the majority has the right to govern. The electoral system, therefore, must be such as to ensure representation to everybody. This is the significance of adult franchise but the method adopted, viz., that of single member constituency really amounts to disenfranchisement of 49 per cent of the voters. It is possible in a single member constituency to disenfranchise even a minority extending to 49 per cent. I am talking of political minority. Even political minorities are entitled to be represented in representative institutions. Therefore the system which is laid down in this Constitution needs revision. It may be said it prevails in England but this is why I drew the attention of the House to certain basic facts to which the Honourable Mover has referred and I would say it would be more advisable to follow the Irish, Swiss and now France in regard to introduction of proportional representation by single transferable or cumulative voting. It may be said that such system leads to multiplicity of parties. This has been in vogue for 25 years in Ireland and everyone is aware that one party governed the country for more than fifteen years and there had been not more than two parties. France had a plethora of parties even when there was no proportional representation. It is better for us to adopt this principle which is more progressive in instinct and which is really democratic.

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I come to another feature of the Constitution, viz., the Ordinance. There was a time when we used to complain that Ordinance was the rule and legislature was hardly consulted. I may here refer to the Father of the Nation who said: "Under the British rule the Viceroy could issue Ordinance for making laws and executing them. There was a hue and cry against the combination of legislative and executive functions. Nothing has happened to warrant a change in our opinion. There should be no Ordinance rule. The Legislative Assemblies should be the only Law makers". It is said when the Assembly is not meeting, an emergency arises, and an Ordinance has to be promulgated. But there is no significance of time and space and you can get an Assembly within two days and it is not at all difficult. Even if a necessity existed, that has disappeared; and moreover what is its effect? Because of the use of Ordinance-making powers the Assembly has become a rubber-stamp. In our province I know there is hardly any legislation which is not preceded by an Ordinance and in a Parliamentary Government where the Cabinet determines really the policy of the majority, once the Cabinet has framed an Ordinance and it comes forward in the form of a legislation, it is impossible for the major party to go back and therefore it is the Cabinet which determines the legislation. I would accordingly submit that there is really no necessity of a provision requiring powers of issuing Ordinance.

Then there is the contingency of emergency. No doubt an emergency clause should be there. But such is the wide scope of the emergency as put in the Draft Constitution, that not only actual violence, not only actual invasion as in the case of America, but threat of violence is enough to warrant declaration of emergency. These features are dangerous and must be eliminated.

I will now come to that portion of the draft which deals with minority rights. In dealing with these rights the first thing that has to be seen is reservation of seats. That is the one unique feature of the Constitution—that a minority is said to be safeguarded by means of reservation of seats, without ensuring that the minority concerned has any right or voice in determining its representative. This is meaningless and even deceptive. The only means of safeguarding minorities is by adopting the system of proportional representation. A writer in the Round Table of March 1948 referring to this system and its working in Ireland said that this solved the question of reconciling justice to minorities with the necessities of a stable Government.

Then I come to the Services. What a strange contrast! In the Legislature you have got statutory reservations where they are meaningless, but when you come to the Services it is merely said their claims shall be considered. This is a very pious wish. The experience of the last fifteen months in the United Provinces and in other provinces has shown that mere pious wishes are not enough. There must be statutory reservations. Take away the reservation from the Legislature and for God's sake give us reservation in the Services. Here I speak not only for the Muslims of the United Provinces but also for other minority people. You concede reservations to Anglo-Indians but you deny it to the Muslims. Why this discrimination? Take the situation in the United Provinces. If you peruse the results of the last twelve months there, hardly five per cent of the Muslims have been taken in the services. I say if you take into account their discharges and dismissals it will be 75 per cent., but if you take new recruitment—it is hardly 5 per cent.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): What did your leaders do in Pakistan?

Mr. Z. H. Lari: My friend wants me to follow in the footsteps of Pakistan. I am not going to do so.

Mr. Vice-President: Order, order.

Mr. Z. H. Lari: I have not mortgaged my rights to Pakistan. I stand here as a citizen of India. What Pakistan does or does not do is not my concern.

An Honourable Member: You have grown wise today!

Mr. Vice-President: Order, order.

Mr. Z. H. Lari: We never said that Muslims in these parts are going to migrate to Pakistan. We are the children of the soil and as such we claim the rights of citizens of India.

Shri Vishwambhar Dayal Tripathi: Even your U. P. leader has escaped!

Mr. Z. H. Lari: Interruptions only show how uncharitable and how undemocratic are these.....

Mr. Vice President: Order, order.

Mr. Z. H. Lari: I Submit to the order. I was saying that my time was very short.

Mr. Vice-President: It has gone already!

Mr. Z. H. Lari: Give me two minutes more please.

Now there is the question of the Cabinet. I admit there can be no statutory representation there. In a parliamentary system of Government it is inconceivable. But you have to consider whether, after introducing proportional representation, it is not proper for us to go back to the Presidential system. In that case it will be possible to have the election of the Cabinet on the Swiss system. But in the present set-up of the Constitution I admit that statutory reservation is impossible and the best that could be done has been done.

Lastly, I would beg of this House to consider that there must be some provision which should recognise the existence of an opposition in the Legislature. Of late since the Socialists seceded from the Congress, there have been utterances from responsible men indicating that the majority party—I do not say this is a confirmed opinion—are not very charitably disposed towards such an opposition. Just as it is in South Africa, or in England or in other countries, the position of the Leader of the Opposition should be accepted, and the one means of accepting is that it should be provided that he should be also granted a salary as in other countries. We know that in the system that is coming, men like myself have no chance to come back. Therefore, it is not in our interest but in the interests of democracy that there should be a proper Opposition which is constructive and charged with a duty to the country, and the motherland, and this can be assured only when you give a status to it in the Constitution itself.

I notice that in the further amendments provided by the Drafting Committee, there is a suggestion for the appointment of an Advisory Committee to advise the President and there the position of the Leader of the Opposition has been recognised. But his position should be recognised even in the Constitution for the Union and for the States.

With these few submissions I conclude. I have made references to certain admissions by Dr. Ambedkar but all the same I have faith in the goodness of my countrymen and in the catholic spirit of those who inhabit this motherland, and I hope that they will rise to the occasion, and now that the critical phase has passed, now that passions have subsided, they will be more realistic and more conciliatory so that there may be an even balance in the country between the majority and the minority, not only theoretically but actually, so that we may concentrate on making India great.

Mr. Hussain Imam (Bihar: Muslim): I wish to say a few words on the Constitution as it has been presented to us. My task has been lightened a

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great deal by the previous speakers who have referred to many of the questions to which I wished to refer.

I must say that I find the position of the President of the Drafting Committee unenviable. He has been attacked from the left for not having copied the Soviet Constitution, and from the right for not having gone back to the village panchayat as his unit. May I say that there is an element of confusion in some our friends' minds, when they want that the Constitution should provide for all the ills to which Indians are subject? It is not part of the Constitution that it should provide for cloth and food. A very revered Member of this Constituent Assembly regretted that this Constitution does not contain any provision for that purpose. My submission, Sir, is that the Constitution is based on the needs of a country to which it is applied. We have to see whether this Constitution does supply those essentials which are peculiar to our own circumstances.

The first lacuna which I find is that there is no mention of the sovereignty of the people. Unless you accept the principle of sovereignty of the people that all power is derived from the people and all Constitutions are based on the will of the people, the result will be confusion.

This has resulted in confusion. For instance, take what was formerly called the Indian States and the British Indian Provinces. The way in which the two have been treated is scarcely just and equitable. We find that people who mainly fought for the achievement of Swaraj or self-rule have lesser power than the people of the States, who did not participate as much in the struggle as we of the Indian provinces. The customs income of certain States has to be compensated by means of central grants. We have been told that there is one citizenship, the citizenship of India. With one-citizenship rights, can the people of the States have different rights? In the Indian States the people will be free from income-tax and income-tax can only be applied to the British Indian provinces. Corporation tax is not levied there except in so far as it might be applicable to one or two Indian States. I therefore suggest that there should be uniformity with a single kind of suzerainty. That is my first fundamental objection to the Draft Constitution.

Secondly, as Dr. Ambedkar himself has pointed out, I think there must not be any differentiation between the provinces and the States. The right to maintain an army which has been given to the Indian States is wrong. India is in a dynamic condition. Thanks to the sagacity and firmness of Sardar Patel, the question of the Indian States has been solved to a great extent and they are no longer a stumbling block in our way. I was very glad to hear yesterday the Prime Minister of the Jodhpur State and one representative gentleman from Madhya Bharat speaking, in which they themselves came forward with the idea of uniformity with the Indian provinces. There is no reason why the portals of the Supreme Court should be closed to the citizens of Indian States. If they are citizens of India, they have as much right as we have to go to this court for the adjudication of their interests and rights. I think that it is all due to the fact that we have not conceded the suzerainty of the people nor the proposition that with uniformity you get as a matter of course a system under which every one will be equal before the law in power and in responsibility.

I was also surprised that a learned pundit of constitutional law like Dr. Ambedkar should have skipped over the fact that the responsibility of the non-parliamentary executive is not less than that of the parliamentary executive. If it is examined it will be found that the committees of the House of Representatives and the Senate in U.S.A. exercise far greater control than the control exercised by the House of Commons. It is wrong to say that the

Executive in the U.S.A. only comes in for a corrective after four years' term of the President. He is subject to day to day control and that control is far greater in the case of the Senate Committees and the House of Representatives than it is in the case of the British Parliament. A very well-known instance is the failure of President Wilson to carry forward his move for the League of Nations, because it was the Senate Committee which did not consent to it. Even the appointment of ambassadors to other countries is subject to the control of the Senate. Therefore it is wrong to say that in the presidential non-parliamentary system there is no control and the control if at all is very remote. It is as intimate if not more intimate than in the British system of parliamentary control. I do not wish to discuss this aspect of the matter further as I shall have opportunities later when we will be discussing this subject again.

I might mention in this connection, as I said earlier, that the constitution must be framed to fit in with the needs of the country. I ask leaders to examine conditions in India. Look at the U.P., the centre of India, where the only other political party that you have got, viz., the Socialist Party, was supposed to be the strongest. What was the result in the local board and district board elections? They were beaten. In the Parliamentary elections out of twelve seats vacated by them every one of them was lost. Is this the way in which you can maintain parliamentary democracy? In a parliamentary democracy it is necessary that we must have an effective opposition. You can never have an effective opposition if you have single seat constituencies. It is only by means of a system of proportional representation that you can avoid the danger of reducing India to a Fascist State. I make this observation in all humility that for the preservation of democracy in India it is necessary that you must have a system whereby an opposition may be allowed to come in. The popularity, the prestige and the name of the Congress are so great that it is impossible for anyone to come in in opposition to the Congress and the result of this is, as has been seen many times in England, that the majority of the electors are disfranchised in this way that if there is a three-cornered contest the defeated candidates might together get more than the successful one. Even conceding that there will be no three-cornered contest a large part of the electorate is disfranchised. Even if you have 60 and 40 per cent. voting, 40 per cent. have no representation in the country, whereas under the system of proportional representation which is prevailing in most of the new advanced countries of Europe you will have representation in which every shade of opinion will be represented.....

Shri. L. Krishnaswami Bharathi (Madras: General): What are those countries in Europe where there is proportional representation at general elections?

Mr. Hussain Imam: In the U.S.A. there is proportional representation.....

Several Honourable Members: No, no.

Mr. Hussain Imam: Switzerland has got it. (Voices: No, no.) Even if nobody has got it, if it is necessary for us, we should not follow what others have done. As I said in the beginning, a constitution must be framed suitable to the needs of the country and not necessarily in line with what others have been doing.

I might explain a point which was made by the previous speaker, viz., that the personal law of the minorities should be safeguarded. The majority need not have the safeguard, because they are the majority, and nothing can be passed in the legislature without their full consent and concurrence, whereas the minority have not got this privilege and therefore it is necessary that the personal law of the Muslims and other minorities who so desire should be

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preserved from interference by the legislature without the concurrence of a vast majority of the members thereof.

Adverting to the question of reservation, as Mr. Lari has said reservation in the legislature is no good when there is no method of proper representation. I therefore say that proportional representation, in addition to being a very necessary item for the preservation of an opposition in the country, would also serve the interest of the minorities. There will be no need to have reservation for minorities provided you give proportional representation in sufficiently large numbers.

For instance, one or two constituencies in each district may be made multi-member constituencies with ten or twelve seats in each. And, if you have the Lists system which prevailed sometime ago in Germany, that would serve a greater purpose; because voting will be on the basis of parties and not on the basis of persons. We want representation more in groups than individually. We do not want the spectacle of France repeated in India. But we do not wish to have a one-party Government which is liable to degenerate into something anti-democratic.

Before I conclude, Sir, I wish to say few words on the language question. I am not going to say anything in opposition to the prevailing sentiment on this matter. The need for the continuance of the English language for the time being has been advocated by the South. But as far as Hindi is concerned, there is no difference of opinion, provided we know what is Hindi. I personally am prepared to adopt the language spoken by Sardar Patel and the language in which he delivered his recent address at Bombay. He does not come from the Urdu-speaking tracts. He is a Gujerati. He speaks the language which is spoken by people everywhere. I had occasion to listen to the radio-relay of his speech at Chowpathi and I found that it was nothing but Hindustani or whatever name you give it. To me the language in which he spoke at Chowpathi was Hindustani. It is a language which is far better understood by the people than the language used by the Department under him, the A.I.R.

We have been told, Sir, that in this respect too, we are following the Gandhian conception. But people forget that Mahatma Gandhi stood for Hindustani to the last moment. He stood for Hindustani, in both Devnagri and Urdu scripts. Devnagri, as far as the script is concerned has nothing to rival it. It is the best possible medium. But what about the language? Hindi (you may call Hindustani), unless you mix it up with big Sanskrit words and fill it up with all common genders, is Hindustani. As I said, the language of the Deputy Prime Minister, coming from a province not speaking Urdu, should be our criterion and guidance. If the Members of the Constituent Assembly are willing to accept it I suggest that Hindustani, written in both Devnagri and Urdu, which was the last wish of Mahatma Gandhi and the most accepted in India today, should be adopted as the national language.

Sir, the Constitution is only framed once. It is not a thing which is done every other day. So it is but right and proper that in framing it we should give the utmost consideration, cool consideration, without heat and without rancour or mental reservations. I appeal to the House that they should forget and forgive the past. It is very painful, Sir, to be reminded every day that we are responsible for bringing Pakistan into existence. In its creation the Congress was as much a party as anybody else. In that spirit I request that Muslims should not be regarded as hostages. They should be regarded as citizens of India with as much right to live and enjoy the amenities of India—the land of their birth—as anyone else. I conclude my speech.

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I congratulate the Honourable Dr. Ambedkar for his lucid and illuminating exposition of the draft Constitution. He and the Drafting Committee had no ordinary task to perform and they deserve our thanks.

Sir I feel it a great privilege to be associated with the framing of the Constitution. I am aware of the solemnity of the occasion. After two centuries of slavery India has emerged from the darkness of bondage into the light of freedom, and today, on this historic occasion we are gathered here to draw up a constitution for Free India which will give shape to our future destiny and carve out the social, political and economic status of the three hundred million people living in this vast sub-continent. We should therefore be fully aware of our responsibilities and set to this task with the point of view of how best to evolve a system best suited to the needs, requirements, culture and genius of the people living here.

Much has been said about the fact that most of the provisions have been borrowed from the Constitutions of the U.S.A., England, Australia, Canada, Switzerland, etc. Sir, I for my part see nothing wrong in so borrowing as *long as the higher interests of the Nation and the well-being and prosperity* of the country are kept in mind. There is no doubt that the draft Constitution has been framed to fit in with the present administration. But this had to be so in the very nature of things. After all, we have all become used to a certain way of life of government and of administration. If the draft Constitution had changed the whole structure of government, there would have been chaos. India is a new recruit to the democratic form of Government. Its people have been used to centuries of autocratic rule and, therefore, to carry on more or less on the lines they have been accustomed for some time more, with changes here and there according to changed conditions, is the best thing possible. The important thing is that power is derived from the people and it is the people who will make or mar the destiny of India.

A lot of criticism has been made about Dr. Ambedkar's remark regarding village polity. Sir, I entirely agree with him. Modern tendency is towards the right of the citizen as against any corporate body and village panchayats can be very autocratic.

Sir, coming to the Fundamental Rights, I find that what has been given with one hand has been taken away by the other. Fundamental Rights should be such that they should not be liable to reservations and to changes by Acts of legislature. It is essential that some at least of the civil liberties of the citizen should be preserved by the Constitution and it should not be easy for the legislature to take them away. Instead of this, we find the provision relating to these Rights full of provisos and exceptions. This means that what has been given today could easily be changed tomorrow by an Act of the legislature.

To my mind it is necessary that some sort of agency should be provided to see that the Fundamental Rights and the Directive Principles are being observed in all provinces in the letter and in the spirit. Otherwise it may be that the absence of such an agency may give rise to the formation of communal organisations with the object of watching the interests of their respective communities. It should be the function of the agency I have suggested to bring to the notice of the Government the cases where the Fundamental Rights and the Directive Principles are not being followed properly. I hope this point of mine will be seriously considered by this august Assembly when we come to discuss the Draft Constitution clause by clause.

Sir, as a woman, I have very great satisfaction in the fact that no discrimination will be made on account of sex. It is in the fitness of things that

[Begum Aizaz Rasul]

such a provision should have been made in the Draft Constitution, and I am sure women can look forward to equality of opportunity under the new Constitution.

Sir, I will not go into the details of the Constitution because I shall deal with the various provisions as we discuss the Constitution clause by clause, but there are a few fundamental issues which have been raised and discussed on the floor of this House during the last two or three days to which I may refer in passing.

Sir, the question of the reservation of seats for the minorities has engaged the attention of this House. It is true, Sir, that last year on the recommendations of the Minorities Sub-Committee, this House accepted the principle of the reservation of seats for certain communities. At that time also I was opposed to this reservation of seats, and today again I repeat that in the new set-up with joint electorates it is absolutely meaningless to have reservation of seats for any minority. We have to depend upon the good-will of the majority community. Therefore speaking for the Muslims I say that to ask for reservation of seats seems to my mind quite pointless, but I do agree with Dr. Ambedkar that it is for the majority to realise its duty not to discriminate against any minority. Sir, if that principle that the majority should not discriminate against any minority is accepted, I can assure you that we will not ask for any reservation of seats as far as the Muslims are concerned. We feel that our interests are absolutely identical with those of the majority, and expect that the majority would deal justly and fairly with all minorities. At the same time, as has been pointed out by some honourable Members in their speeches, reservation of seats for minorities in the Services is a very essential thing and I hope that the members of this House will consider it when we deal with that question.

Then, Sir, another question which has been engaging the attention of this House is the question of language. Sir, the question of language in its very nature is a very important question because after all we have to devise something which is most acceptable to the people living in this country. It is quite true that the language of the country should be the language that is mostly spoken and understood by the people of the country, and I do not deny the fact that Hindi is the language which is understood and spoken by the majority of the people (*hear*, hear), but, Sir, the word 'Hindi' as it is being interpreted today is a very wrong interpretation. After all there is not much difference between Hindi and Hindustani. Every one will bear witness to the fact that the language spoken in the country, whether by Hindus or Muslims, is a very different language to that which is being described as Hindi and which is being advocated by the protagonists of Hindi. What is advocated is Sanskritised Hindi which is only understood by a small section of the people. If we take the villages, the language spoken there is very different to what is called Hindi here.

Then, Sir, I do not think that the forty million Muslims living in this country can immediately be asked to change their language. I agree that we will have to learn Hindi in the Devanagri script, but some time must be given to us to effect the change-over. It is very unfair of you to ask us suddenly to transact all the business of the state as well as the business in the legislatures in a language that we are not conversant with. I therefore feel that this is a matter which should be calmly and coolly considered. After all, this is not a matter which can be decided on the spur of the moment or on grounds of sentiment or passion. We have to keep in mind the requirements of the country. The Father of the Nation up to the last advocated Hindus-

tani written in both the scripts as the only language which is most suitable and which can be acceptable to the mass of the people living in this country. I therefore recommend that, whereas Hindi in the Devanagri Script can be made the ultimate *lingua franca* of the country, a certain time limit, say about 15 years, must be given for the change over and until then Hindustani in both the scripts should remain the language of India.

In conclusion, Sir, I would say that whatever we put in this constitution, we must see that all our efforts are concentrated to make India strong and prosperous with equality of opportunity, happiness and prosperity for all so that India may lead the countries of the world on the path of peace and progress.

Dr. Monomohan Das (West Bengal: General): Mr. Vice-President, Sir, a few days have passed since the Draft Constitution was introduced on the floor of this House by our able Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. During these few days, the Draft Constitution has met with scorching criticism at the hands of different members of this House. With the exception of a very few members who questioned the very competency and authenticity of this House to pass the Draft Constitution, all the other Members have been unanimous in their verdict. They have accepted the Draft Constitution with some alterations, additions and omissions, in some clauses and articles, as a fairly workable one to begin with. One very re-assuring feature that we find in the Constitution is the single citizenship. As the Chairman of the Drafting Committee has said, unlike the American Constitution, the Draft Constitution has given us a single citizenship, the citizenship of India. In these days of provincialism, when every province likes to thrive at the cost of its neighbouring ones, when we have forfeited the sympathy and goodwill of our neighbouring provinces, it is indeed a great re-assuring feature. I, as a member from West Bengal, especially find myself elated to think that henceforth when this constitution is passed, when this clause of single citizenship, with its equal rights and privileges all over India, is passed, the door of our neighbouring provinces will be open to us, so that our unfortunate brethern from the Eastern Pakistan, will find a breathing space in our neighbouring provinces.

I beg to mention another point regarding the minority problem. The safeguards that have been awarded to the minorities in the draft Constitution, have caused some amount of resentment. Nobody can deny that minorities do exist in this country. No amount of denial can efface these minorities from the face of India. You know Sir, that democracy means rule by majority. The majority is always there to rule and the minority will always be there at the mercy of the majority. The majority has no need to be afraid of these minorities. It behoves the majority, I think, to protect these minorities, and give them safeguards, if necessary, so that a sense of confidence, a sense of security may be created in their hearts. I think, what the minorities of India demand and deserve today, from the majority, is a sympathetic consideration of their problems and not a challenging attitude.

One very pertinent question has been raised by an eminent member of this House, Sir, when he said that the Draft Constitution of India has borrowed many things from the Constitutions of other countries of the world, but it has taken nothing from the indigenous soil, from our cultural heritage, evidently meaning the Village Panchayat System. We, as a sentimental and idealist race have a natural tendency and love for everything that is old and past. Our Chairman of the Drafting Committee has been criticised by various personages of this House, for not including this Village Panchayat System into the Draft Constitution. They have taken it for granted that this Constitution has been the work of a single man, forgetting that there was a Constitution-making body, the Drafting Committee, always to guide the framing of

[Dr. Monomohan Das]

Constitutions. I think, it is strange, Sir, that all the members of the Drafting Committee including the Chairman have forgotten to include this Village Panchayat System into our Constitution. The Village Panchayat System has been a blind spot to all of them. I personally think the Drafting Committee has wilfully left it to the provincial legislatures to frame whatever they like about this Village Panchayat System.

In fact, Sir, there are provinces in which legislation has already been undertaken in that direction, I mean, Sir, the Gram Panchayat Bill of the United Provinces. There is nothing in our Constitution that will take from the provincial legislatures the power to pass an Act in that direction. If our provincial legislatures think that this Village Panchayat system will do immense good to our country, they are quite at liberty to introduce it in their legislatures and pass it accordingly. So I think, Sir, the criticisms sometimes amounting to abuse, which have been showered upon the Chairman of the Drafting Committee, are wholly uncalled for, unjustifiable, uncharitable, and if I am permitted to say so, undignified.

I beg to utter a few words of caution to all Honourable friends who are so enthusiastic protagonists of the Village Panchayat System. Unless and until our village peoples are educated, unless and until they become politically conscious unless they become conscious of their civic rights and responsibilities, and unless they become conscious of their rights and privileges, this Village Panchayat system will do more harm than good. I know that I am inviting se[illegible] upon myself when I say that the Village Panchayat System has been there and was there for centuries and centuries. How much has it contributed to the welfare of our country, how much has it contributed to our social, political and economic uplift? If this system is introduced before our village people are properly educated, then I think, Sir, the local influential classes will absorb to themselves all the powers and privileges that will be given by the Panchayat System and they will utilise it for their selfish motives. This system will enable the village zamindars, the village talukdars, the Mahajans and the money-lending classes to rob, to exploit the less cultured, the less educated, poorer classes of the villages.

With these words, Sir, I endorse wholeheartedly the motion put forward by the Chairman of the Drafting Committee for consideration of the Draft Constitution. I thank you, Sir, for the opportunity you have given me to express my views on the floor of this House.

Shri V. I. Muniswamy Pillai (Madras: General): Mr. Vice-President, Sir, nobody in this august Assembly or outside can belittle the efforts and the services rendered by the Drafting Committee that has presented the Draft Constitution for the approval of this House. The future generation will feel great pride that this Drafting Committee has been able to digest the various constitutions that are obtaining in the world today and to cull from them such of the provisions as are needed for the elevation of this great sub-continent.

Sir, going through the various sections, one has to note whether the underdog, the common man, the communities that have been neglected in the past, have been well protected, and facilities for citizenship have been afforded. Reading this constitution, one finds that there are two novel things that are not obtaining in any of the constitutions of the world: first of all, the eradication of untouchability. As a member of the so-called Harijan community, I welcome it. Untouchability has eaten into the vitals of the nation, and with all the pride and privilege of the Hindu community, the outside world have been looking at India with a doubtful eye. I welcome this provision because it shows the greatness of the majority community that they found out that there is a

fungus that is eating into nation's pride and they have come forward to remove this curse of untouchability. There are people in India today who say that enough propaganda has been made to eradicate untouchability and there is no need for further propaganda. But I honestly feel, Sir, if you go to the village parts, untouchability is rampant still and a provision of this sort in the Constitution is a welcome thing.

The second feature is the abolition of forced labour (*begar*). If there is any labour required for common purposes in the village, this most unfortunate fellow, the Harijan, is always caught hold of to do all menial and inferior service. By the provisions in this Constitution, I am sure you are elevating a community that has been outside the pale of society. It was given to the great Father of the Nation, Mahatma Gandhi, as a great mycologist, to find out the fungi that were eating into the national vitality. He has made certain proposals to eradicate this evil and I am glad that the Drafting Committee have made provisions to eradicate untouchability and forced labour on this unfortunate community.

Sir, in the Draft Constitution, they have stated that the eradication of untouchability can be made by laws. I plead that mere laws are not enough. Special laws have to be made. In my own province the legislature was good enough to pass an Act to remove the civil disabilities; but in putting the Act into operation, it was not possible even for the Government to enforce the facilities that were sought to be conferred by the Act. Therefore, I plead that there ought to be special laws if you really want to do away with untouchability and forced labour.

Coming to the Fundamental Rights that have been accorded to all in this country, and especialy for the unfortunate minority communities, the Advisory Committee, the Minorities Committee and the Fundamental Rights Committee that went through the whole thing have adopted certain methods and they have been approved by this august Assembly.

There are certain sections of people who say that no reservation is required. But, all those, who have seen the unfortunate plight of these minority communities, feel that reservation must be there, as already accepted by the Minorities Committee and also approved by this august Assembly. So far as the protection of the minorities are concerned, it is the good-will of this august Assembly to confer adult franchise with joint electrates. Of course, no one can deny that this is the best thing that could be done in the circumstances to elevate this comumnity, that is poor in economic status and also poor in education. Any attempt to do away with adult franchise will be a great sin. In the matter of safeguard to the minorities, I think what is now provided in the Draft Constitution is a welcome thing; but there is still in the provinces a strong feeling against these safeguards. I honestly feel that they must be enforced in all ways.

Coming to the economic condition of the villagers, especially the tillers of the soil and agricultural labour, I do not find any provision has been made in the Draft Constitution to consider the village as a unit. Of course, due to exploitation and other things, the villages are in rack and ruin. It is the highest duty of any constitution-making body to see that the village is set right. Due to the hereditary system of appointment of village officers, Maniagars and karnams, they are the people who rule the villages. Having made a constitution for the upper strata for the management of the provinces of India, if we leave alone the village re-construction, I feel that we are doing a wrong thing. It is the wish of Mahatma Gandhi also that the village must be made a self-governing unit. I am sure this august Assembly will reconsider what has been presented to this House and see that we make proper amendments so that the village or a group of villages could come under the category of self-governing

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institutions. Whether in the District Boards or Municipalities, there are no real representatives of the people of the village or the taluk. Due to certain circumstances the Collectors in my province are asked to look after the District Board administration. These Collectors are loaded with so much other responsible work that they appoint a Special officer to carry on the District Board administration. This is not a popular institution as it is now constituted. I feel that the village unit must be taken into account.

In the matter of appointment of Ministers, the President is given full powers. If you read the provisions of the Government of India Act, 1935, you will find that provision has been made that the Governor or the President, in choosing his Ministers, shall take into account the claims of the minority communities. I find no such provision in this Draft Constitution. I am sure in the further deliberations over this Draft Constitution, some such provision will be made to take into account claims of the minority communities for these Ministers' posts. Sir, I believe that it is political power that can give a chance of better service to these neglected communities. Even in the matter of All India services, in section 10 it is said that the backward communities are to be taken note of. But, if you persue the list of backward communities from province to province, the Scheduled Castes do not come in it. I feel that also must be rectified.

Finally, there is the controversy about the national language. Taking my own community, I do not think that even one per cent of the population have taken to Hindi or Hindustani.

I feel, Sir, that this august body must deliberate properly and should not force any language on a province, or district or state where it is not welcomed.

With these few observations, I congratulate the President and members of the Drafting Committee for their great service in presenting the Draft Constitution to this Assembly and I commend the motion to this House for its acceptance.

Shrimati Dakshayani Velayudhan (Madras: General): Mr. Vice-President, Sir, now that the draft is before us for general discussion, I request you to permit me to express my views on the same. The able and eloquent Chairman of the drafting Committee has done his duty creditably within the scope of the general set-up of the new State of India. I feel that even if he wanted he could not have gone beyond the broad principles under which transfer of power took place and I therefore think that any criticism that is levelled against him is totally uncharitable and undeserved. Even if there is any blame—and I think there is—it should go only to those of us who are present here and who were sent for the purpose of framing a Constitution and on whom responsibilities were conferred by the dumb millions of this land who by virtue of their suffering for independence had great hopes when they sent us to this Assembly. But this does not mean that I have not got any criticism about the Draft. I fear that the Constituent Assembly from the very beginning of its formation showed more interest in things other than making a constitution. We hear daily speeches made by our great leaders and their ideals and principles but in the Constitution we find that it is barren of their ideas and principles. We have got leaders of national and inter-national importance but in our Constitution we find that those principles and ideals are absent and it is a great tragedy to find that such a draft has been placed before us and I do not think even the members of the Drafting Committee have completely read the Draft that is placed before us.

The general criticism is that the draft is a replica of the 1935 Act, but we cannot forget the fact that we have got a legacy of the British Imperialist ad-

ministration which goes by the name of the Parliamentary system of Government. The trouble was that we were depending on it and we will have to depend on it even after the Constitution is put into operation. The trouble arose from one point, viz., just as the British administrators who wanted to keep India centrally and provincially as a single unit, we in our bewilderment and anxiety tried to bring India centrally and provincially as a strong unit and this centralisation of power has led to all the troubles. There are two ways of making India a strong unit. One is by the method of centralisation of power and the other is by decentralisation; but centralisation is possible only through parliamentary system which now goes under the safe words 'democratic methods', but in this draft we can't find anything that is democratic and decentralisation is totally absent. It is a great tragedy that in making the constitution of a great country with thirty crores of people, with a great culture behind it and the great principles and teachings of the greatest man of the world on the surface, we were only able to produce a constitution that is totally foreign to us. The arguments put forward by the Chairman of the Drafting Committee are not at all convincing. He has said that we are very late in making the Draft Constitution. But I can cite examples which will show that his arguments are not sound. The Drafting Committee recommends that the President of the Union can nominate fifteen members to the Council of States. Then another plea is that the term of the legislature should be more than four years. There is another misnomer in the Draft and that is about the selection or the election of the Governors. The Committee feels that if the Governor and the Chief Minister who is responsible to the Legislature are elected by the people then there will be friction between the two. But the remedy they have suggested is worse than the disease. There is a panel and the President is to select from the four one person as a Governor. If the Centre happens to have a Congress President and if a province is having a Socialist majority, suppose the Socialist party recommends three from their party and one from the Congress, certainly the President at the Centre will select the Congress man to be the Governor. Certainly this will lead to friction. We find that this direct recruitment to Governorship is taken from the Government of India Act and it shows that we have not left out even a comma from it.

Then, Sir, I cannot understand why there should be Centrally Administered areas under the new Constitution. The British kept these areas simply to have the military rule in the country. But I do not understand why we should have such areas under the present Constitution. It is better that these provinces are merged with the adjoining provinces and thus we will not be losing anything. We find that the draftsmen included such a clause and as a result it has come before us for discussion.

Then I want to say a few words about the Socialist demand at this stage. The Socialists are the second party which wants to come as an Opposition to the official bloc. We cannot deny the large following that they are having in the country. They have declared that they want to be a Constitutional Opposition in the future. But I must say that I do not agree with their demand that this Constituent Assembly should be buried. I have to make one suggestion. The present Constitution, when it comes into force, will be put before the public by way of the General Elections. Then this Constitution can be made an election issue either for its acceptance or rejection. If the majority of the electorates accept the Constitution, then we can take it that the whole country has accepted it. If the majority of the electorates reject it then we must take it that the whole country has rejected it, and the party that comes into power, and the Legislature that will be formed thereafter, can take up the Constitution and makes the amendments that are necessary. I think, Sir, the Congress Party that is in power today will accept such a policy and see

[Shrimati Dakshayani Velayudhan]
that we are not blamed for being undemocratic in our approach to Constitution making.

Shri Deshbandhu Gupta (Delhi): *[Mr. President I am sorry I cannot congratulate Dr. Ambedkar, the Chairman of the Drafting Committee who has received congratulations from different Members of the House. I have read that part of the recommendations of the Drafting Committee which relates to the Chief Commissioners' Provinces, with great care. I would like to confine my remarks to this part only and wish that the Members of this House should go through it minutely.

Mr. President, you are aware that previously when the problem of Chief Commissioners' provinces was brought before the Constituent Assembly, the recommendations of the Drafting Committee were that the system of governance should remain the same as is now in force. Hindustan is changed, the country is free, but Delhi and other Chief Commissioners' provinces, in spite of their considerable population, did not have any say in the administration. There was no change in the system of their governance. When such a recommendation was brought before us in the Constituent Assembly, *the representatives of the Chief Commissioners' provinces raised* their voice and the Constituent Assembly appointed a special sub-Committee, which was entrusted with the task of framing a constitution in accord with the conditions prevailing there. Mr. President, the chairman of this special Sub-Committee was Dr. Pattabhi Sitaramayya, the President-elect of our present National Congress and a senior member of this House. This special Sub-Committee had obtained the services of our constitutional "Pandit" Shri N. Gopalaswami Ayyangar. Moreover, our another Constitutional "Pandit", Shri K. Santhanam was also one of its members who always took a keen interest in it (*laughter*). (Do you doubt it)? Every member of the committee took interest in it and the recommendations which they submitted were unanimous. This committee held several meetings, considered the whole problem, examined all the sides of the question minutely and it also considered those difficulties of the Government, due to which they had deemed it proper to treat the Chief Commissioners' Provinces with indifference. Accordingly, taking all the matters into consideration, recommendations were submitted in which it was clearly stated that although the people of these areas demand that they should have the same rights as the people of the other provinces have already got—and there is no reason why this should not be—yet, *considering that Delhi has a peculiar position of its own, they have* recommended that Delhi and other similar provinces should be turned into Lieutenant-Governors' Provinces; and as regards the appointment of a Lieutenant-Governor it was conceded that the Centre should have control over him. Accordingly, it was resolved that instead of electing the Governor the President of the Republic should nominate him.

Another safeguard which has been provided is that, unlike other provinces, the constitution of the provinces should be framed differently and in such a manner that the provincial and central list should be concurrent, so that the Centre should have the full power to interfere in any legislation it likes which has been passed by the provincial Legislature. Moreover, the province should not have its exclusive jurisdiction.

It also has been provided that its budget should be brought before the Centre and that the President should have the right to interfere in it. This is not all. There is yet another safeguard, which says that should any difference arise between the Lieutenant-Governor and the Ministers on any matter it would be referred to the President whose decision on the subject would be

*[Translation of Hindustan

taken as final. I fail to understand why the Drafting Committee deemed it necessary to dismiss this question in a few lines on the plea that as Delhi is the Capital town, local administration was not possible—although the committee had submitted its recommendations after mature consideration in which maximum regard was paid to the powers of the Centre. It seems to me that the Drafting Committee, instead of paying due regard to the unanimous recommendations of the special committee or trying to find any other way out, has acted according to its prejudices and thought that it was not a matter to which consideration should be given. It seems to me that these gentlemen were under the impression that the special committee was appointed merely to console the people of Delhi and other Chief Commissioners' provinces. That is why its recommendations have been thrown into the waste paper basket. I would like to ask them, why did they not realise that so many Members of the Constituent Assembly who spend considerable time in Delhi have certainly thought it proper that Delhi's population of 20 lakhs should have a say in their own administration? Does it look nice that in case there is a partial strike in Delhi, the Home Minister and the Prme Minister should run about to stop it? Is it proper that even under the new system of administration the cabinet ministers should be called upon to settle even the petty affairs of Delhi and the people of Delhi should have no voice? It is said that there being no parallel in Australia, it could not be done also here in India. I should have thought that we should try to benefit by the constitution of other countries and should not merely copy word by word. The example of Australia has been cited, but the population of its Capital town was 8000, and the estimate of its population in 1944 was 12,000. Its population is less than that of Narela, a town near Delhi. If you want to follow the example of Australia, then by all means make Narela your capital and exercise your authority there. The people of Delhi will have no objection. Another example which has been cited is that of Washington. This example can hold good to a certain extent. But I think that Delhi and Washington cannot be weighed in the same scale. Delhi is a commercial and an industrial town and it has a population of 20 lakhs whereas the population of Washington is near about 8 lakhs. Washington has been specially built to serve the purpose of a capital. Delhi has been in existence for centuries, nay for thousands of years. It has a culture of its own and its population has its own requirements.

To my mind, great injustice is being done to the citizens of Delhi by dismissing the whole question in few lines by saying that, as it is not done in United States and in Australia, therefore nothing can be done likewise in Delhi. I would like to ask whether it is not a fact that Moscow has a separate province and a provincial administration of its own. If Moscow, being the Capital of U.S.S.R. can have a separate administration, why can't Delhi have one? Is it not a fact that there are four separate provinces in the Union of South Africa? And is it not a fact that even there, the capital city is also the capital of a province? Then why cannot it be done in India? Only two examples have been cited before us and of these two, one is that of a place where the population is 8000. I would like to ask with greatest respect: what comparison could there be between the capital of Australia and Delhi? Is it not an injustice that the case of Delhi be dismissed in a minute by comparing it with a town having a populaton of 8000?

I would like to say in all humility that if this Constituent Assembly, which is representative of the people, does not lend its ear to the voice of the people, then they will have to adopt some other method for making their voice heard by the members. Since 1927 from every nook and corner of Delhi the cry is being raised that Delhi should have a separate administration of its own; even today a resolution to the effect has been passed by the Delhi Provincial Congress Committee. A similar resolution has also been passed at a provincial

[Shri Deshbandhu Gupta]

political conference. Chief Commissioner's Advisory Council and the Delhi Municipal Committee have adopted similar resolutions. Similar resolutions have been passed in hundreds of meetings but the members of our Drafting Committee have completely ignored that; they have not cared to take note of that at all. I think it is a grave injustice. There can be no greater injustice that the residents of Delhi, which is the heart of India, be denied a share in its administration. It is said that this demand is being put forth as some Delhi-wallas are hankering for Governorship and Ministership. I ask my worthy friend that while he poses to be the standard-bearer of the minority-rights—Dr. Ambedkar's attentive eye at once catches even the minutest point, if any, concerning the minorities—how did the claim of this small province escape his notice? He should have shown some consideration to Delhi, regarding it at least as a minorities province. Even today when it concerns a religious minority, which is only 30 to 35 lakhs, the question is brought before the Constituent Assembly. It draws the attention of all of our leaders and they do their utmost to find a solution, but nobody today pays any heed to the Delhi province. Is it not an injustice to ignore the demand of twenty lakhs of people and to regard the twenty-lakh population as insignificant? Today about six lakhs of our brethren have come down to Delhi from West Punjab after losing their all. Delhi has given them shelter and made them its own. I want to know whether this Constituent Assembly wants to penalise doubly these six lakhs of people by denying them franchise? That would be a great injustice. If you think that Delhi, being the capital, needs more of protection then you can certainly give it. Delhi-wallas are prepared for that service. In the recommendation, which we have placed before you, we have ourselves conceded wide powers. What do you then lose by giving to Delhi a small Legislative Council and a few ministers? You will have full freedom to suspend the whole thing whenever you like. The special Committee have themselves given all these powers to the President. Even here, instead of giving this a trial, which would be a step in the right direction, we are told that there is no necessity of giving it a trial, and the President is vested with powers to take any such action, if and when he thought fit. On top of it all, it is made out that this is the only comprehensive solution of this problem. Mr. President, through you, I entreat the Honourable members of this House to ponder over this question calmly and to realise that the feeling of the people of Delhi is very strong and that their demand and their grievance is quite justified.

The same may be said about Ajmer-Merwara and Coorg; but as most probably they may amalgamate themselves with their neighbouring states they may thus acquire all the rights enjoyable by an autonomous province; but as regards Delhi it is being ordained that there would be no change in its status. Previously, Delhi's population was about six lakhs. Its present population is near about twenty lakhs, and it is estimated that within the next decade it would increase by another ten or fifteen lakhs. It is the fourth biggest town of India and its people have no voice in its administration. What is the state of affairs today? Delhi's Administrative report does not come before us. We are told that a Chief Commissioner's Advisory Council has been provided and we must be content with that. So, listen a bit about that also. It is more than a year that it was set up but not even once during all this period has the Chief Commissioner thought it necessary to consult the members of his Advisory Council on any matter of day-to-day administration, so far. When riots broke out in Delhi, an emergency committee under the Chairmanship of Mr. Bhabha was set up by the Central Cabinet. But Delhi's Advisory Council had no hand in it. I want to know that if some sort of misfortune or devastation befalls Delhi today, or some sort of difficulties are

created by the people of Delhi, then would it not affect us? How could it be therefore that the people of Delhi are not to be given any voice in its administration? New townships are being built around Delhi; new schemes are being planned, but nobody consults the people of Delhi. There is no place for them. For trivial matters they have to go to the Prime Minister or to the other Ministers. If Bombayites are capable of self-government, if Calcutta people are capable of running a government, and if U.P. with a population of five crores can run its government, than the same right should be given to the people of Delhi so that they may run the administration of Delhi province. The people of Delhi have never lagged behind during the hour of trial; their part in the struggle for freedom has been no less than that of others. In spite of all this, it is stated that no rights can be given to the Chief Commissioners' provinces of Delhi and Ajmer-Merwara. I want to emphasize that this question cannot be settled so easily.

Sir, I being the only member here for Delhi, my voice is feeble; I get little opportunity to make known to this House the aspirations of the people of Delhi. Today, with the great difficulty I have got this opportunity to put their case before this House; who cares for a cry in the wilderness? The most potent argument that I can place before you is that whatever safeguards you think proper, you may take. We shall have no objection to that, but the local administration should be entrusted to the people of Delhi. Delhi's status should be similar to that of other provinces. If you do not concede this right to them, it would be a grave injustice. The consequences will not be good.]

Shri Gokulbhai Daulatram Bhatt (Bombay States): *[Mr. President, The minorities are being afforded an opportunity today to speak to the motion. I am, however, from the Native States. But these States are as yet political minors though they are gradually moving forward to attain the age of political majority. I am specially here to demand that we, who have reached this fulness of political age, should be recognised to have attained it, notwithstanding those who would like to deny us this right. The fact is that our States and Unions of States are similar in character to the other provinces. I believe that I have been afforded this opportunity on this very ground and I only say that it was for this very purpose that I had agreed to it and I thank you, Sir, for affording this opportunity to me. Since the draft of the constitution reached me I have been carefully scrutinising it. I may therefore say that it is not that I have begun its scrutiny only a few days back. But from the day I began to examine it I have felt that there is nothing in it which may be said to be proper and right. I admit that it is quite proper to borrow, in a written constitution, such provisions from constitutions of other countries as may be considered obviously very good and useful. But the bold and authoritative statement of the Chairman of the Drafting Committee that the constitution we are going to accept would be the best in the world should be taken with some reservation. He says so because he is one of those who have prepared this draft—and I admit that they are entitled to gratitude on our part for the pains they have taken and the labours they have put in, borrowing parts from the constitutions of innumerable countries. Of course, it is not that these parts are disparate nor do I suggest that they have strung up a remarkable frame of unharmonious parts gathered from here and there. No, I would not like to make such an observation, for I do not think that the disparity within its various parts is to such an extent as would justify such a sentiment. But I would say that even in the buildings of Delhi, the city where we are meeting today and of which Shri Deshbandhuji has been telling us just now and which I agree should be given a separate status of its own

*[] Translation of Hindustani Speech.

[Shri Gokulbhai Daulatram Bhatt]

in the buildings of Delhi, for example, in a building like the Governor General's House there are to be found traces of ancient architecture just as much as there are those of modern architecture. Similarly I concede that good provisions of the constitutions of other countries may be included in our Constitution. But I feel pained today, as I did even before, that in our eagerness to borrow from other countries we have totally neglected those ancient principles and institutions of our country which are there even today and which we have inherited in our blood. It is a draft of the Constitution but neither its guiding principles nor its body are vitalised by the heart of India. The truth is that it does not give us the sense of being our own. This draft is no doubt beautifully decorated and decorated with flowers and other attractive articles. But the fragrance which such a constitution should give out is not there. I do not suggest that the labours of the Committee were a mere waste of energy and time, but I beg to be excused if I do wonder why so many months were spent on it when the constitution to be framed was to be only of this nature. I do not deny that there are some good features in it and I extend my congratulations to them for the same; but considering it as a whole I doubt seriously if it can at all be considered a constitution which is Indian in spirit and in character.

Dr. Ambedkar boldly admitted, and the members of the Drafting Committee do concede that in this constitution there is no provision for establishing Panchayat Raj, the village Panchayati system in India. When there is no such provision, it can never be the constitution of India. To forget or spurn the system of village Panchayats, which has lifted us up and which has sustained us so far and to declare boldly that it has been deliberately spurned—well in all humility I lodge my protest against it. They admit that they have spurned it and have not included it in our constitution. He has said so and that too with great emphasis. I am pained at the fact that the Chairman of our Drafting Committee has used the words, "what is the village but a sink of localism and a den of ignorance...I am glad that the Draft Constitution has discarded the village..." I was grieved to find that our great Pandit with all his knowledge of Sanskrit and politics, has opposed the system of village Panchayats in this way. If the village is to be discarded, someone can also boldly demand that this constitution be discarded. But I am a humble person and do not have much experience either. Occasionally I am led by sentiment also to make an observation. But in all circumstances an attempt should be made to include in some form, by the amendments we intend to bring forward, that democracy should be the foundation of our polity. Then alone can our Constitution be complete, then alone will it have life and then alone will we have the feeling that this constitution is our own. Otherwise we would be rearing this great building on a foundation of sand and it will surely fall down. This is what I particularly want to suggest and that was why I wanted to speak.

Another matter to which I want to draw your attention is that some of our States have joined together to form a number of unions. It is a matter of great satisfaction that our able leader Sardar Patel has changed the very face of the States with great speed and I am proud of it. Now, the constitution will be completed, I admit, by the end of December or in January next. But several States have and desire to continue to have a separate existence of their own. It must be said that if the province of Orissa can have a separate existence, several states such as Travancore, Cochin, Jaipur, Jodhpur etc., can also maintain their separate existence. But I humbly submit that if we form such small provinces, we will find ourselves in the grip of much worse provincialism than we have today and all our unity will be shattered. The result will be that we will not be as strong as we are to-

day. I would say that the States and provinces should be so big and so well administered as to be able to stand on their own legs. A Revenue of six crores or seven crores or eight crores is not sufficient. No large province can pull on with this revenue. In my opinion, no such province should be formed as may have a smaller revenue than twenty to twenty five crores; nor in my opinion should there be formed any union of States which does not have that much revenue. But this is a matter which requires consideration, special consideration, by our leaders. I come from Rajputana and from a small State. Even though I admit that the rulers have made great sacrifices and may also praise their self-surrender. Yet I wonder how long can Bhopal be permitted to maintain, as it is doing today, a separate existence from Madhya Bharat, how long Benares and Rampur can be permitted to have their separate existence and Jodhpur and Bikaner, in our parts, can be permitted to remain separate autonomous identities. When India is going to be divided into various provinces—and of course they should be big ones—I think the rulers, rulers of big States, should come forward and on the basis of mutual understanding merge their States into sufficiently big units. If, for example, Rajputana is formed into a unit by itself the question of Ajmer and Merwara will naturally be solved for there would be no reason to continue its separate existence as it is but a small province. It is a part of Rajputana and should be naturally merged therein. Rulers may be given high offices in order to keep up their dignity. The offices of Rajpramukh and Up-Rajpramukh are already there. Besides these, there are many other offices in India which should be given to rulers because we respect them. So far as the States are concerned, we would not in any circumstances like to lag behind the provinces, nor would it be proper to keep them behind the Provinces. If it be said for any reason that we have acceded only in a few subjects, I would say that this need not be so. We do say that our status should be improved because you are kind to us and want to lead us forward. We would not like to be put on any other footing than that of the other provinces. Our status should be the same as of provinces in all matters, be they relating to High Court or Supreme Court. I am sure you will help us in the matter. We shall ask our leaders to help us, to lead us forward and give us the same place that the provinces have.

I shall not speak much because many friends have already put many of these facts before you. But I do like to submit that in regard to the formation of small provinces on linguistic basis I hold a different view. It is my opinion that under the existing conditions in India we should not even think of this for at least the next ten years. I would submit earnestly to my friends to postpone for the present the issue of the Linguistic Provinces for the sake of the unity that we are seeking to establish and for the sake of the powerful nation we are trying to build up now. We shall think over the question after ten years when things have settled down.

This is what I wanted to say. As far as Delhi and other places are concerned, I would like to urge that we should take into consideration the fact that Delhi is the Capital and that as such it must be given a distinct status. I am one with Lala Deshbandhu Gupta on this question. [But the small regions like Ajmer-Marwara, Coorg, Pantpiploda etc. should be merged in the provinces. It is no use making them centrally administered areas. This much I would like to submit to Doctor Sahib. He is a great scholar, and as such he should treat this country also as a land of wisdom. It is my appeal to him that he should give a place to the soul of India in this constitution.]

The Honourable Pandit Jawaharlal Nehru: (United Provinces: General) (Rising amidst cheers) Mr. Vice-President, Sir, we are on the last lap of our long journey. Nearly two years ago, we met in this hall and

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on that solemn occasion it was my high privilege to move a Resolution which has come to be known as the Objectives Resolution. That is rather a prosaic description of that Resolution because it embodied something more than mere objectives, although objectives are big things in the life of a nation. It tried to embody, in so far as it is possible in cold print to embody, the spirit that lay behind the Indian people at the time. It is difficult to maintain the spirit of a nation or a people at a high level all the time and I do not know if we have succeeded in doing that. Nevertheless I hope that it is in that spirit that we have to approach the framing of this Constitution and it is in that spirit that we shall consider it in detail, always using that Objectives Resolution as the yard measure with which to test every clause and phrase in this Constitution. It may be, of course, that we can improve even on that Resolution; if so, certainly we should do it, but I think that Resolution in some of its clauses laid down the fundamental and basic content of what our Constitution should be. The Constitution is after all some kind of legal body given to the ways of Governments and the life of a people. A Constitution if it is out of touch with the people's life, aims and aspirations, becomes rather empty: if it falls behind those aims, it drags the people down. It should be something ahead to keep people's eyes and minds up to a certain high mark. I think that the Objectives Resolution did that. Inevitably since then in the course of numerous discussions, passions were roused about what I would beg to say are relatively unimportant matters in this larger context of giving shape to a nation's aspirations and will. Not that they were unimportant, because each thing in a nation's life is important, but still there is a question of priority, there is a question of relative importance, there is a question also of what comes first and what comes second. After all there may be many truths, but it is important to know what is the first truth. It is important to know what in a particular context of events is the first thing to be done, to be thought of and to be put down, and it is the test of a nation and a people to be able to distinguish between the first things and the second things. If we put the second things first, then inevitably the first and the most important things suffer a certain eclipse.

Now I have ventured with your permission, Sir, to take part in this initial debate on this Draft Constitution, but it is not my intention to deal with any particular part of it, either in commendation of it or in criticism, because a great deal of that kind has already been said and will no doubt be said. But in view of that perhaps I could make some useful contribution to this debate by drawing attention to certain fundamental factors again. I had thought that I could do this even more because in recent days and weeks, I have been beyond the shores of India, have visited foreign lands, met eminent people and statesmen of other countries and had the advantage of looking at this beloved country of ours from a distance. That is some advantage. It is true that those who look from a distance do not see many things that exist in this country. But it is equally true that those who live in this country and are surrounded all the time with our numerous difficulties and problems sometimes may fail to see the picture as a whole. We have to do both; to see our problems in their intricate detail in order to understand them and also to see them in some perspective so that we may have that picture as a whole before our eyes.

Now this becomes even more important during a period of swift transition such as we have gone through. We who have lived through this period of transition with all its triumphs and glories and sorrows and bitterness, we are affected by all these changes; we are changing ourselves; we do not notice ourselves changing or the country changing so much and it is a little helpful to be out of this turmoil for a while and to look at it from a distance and to look at it also to some extent with the eyes of other people. I have had

that opportunity given to me. I am glad of that opportunity, because for the moment I was rid of the tremendous burden of responsibility which all of us carried and which in a measure some of us who have to shoulder the burden of Government have to carry more. For a moment I was rid of those immediate responsibilities and with a mind somewhat free, I could look at that picture and I saw from that distance the rising star of India far above the horizon (*hear, hear*) and casting its soothing light, in spite of all that has happened, over many countries of the world, who looked up to it with hope, who considered that out of this new Free India would come various forces which would help Asia, which would help the world somewhat to right itself, which would co-operate with other similar forces elsewhere, because the world is in a bad way, because this great continent of Asia or Europe and the rest of the world are in a bad way and are faced with problems which might almost appear to be insurmountable. And sometimes one has the feeling as if we were all actors in some terrible Greek tragedy which was moving on to its inevitable climax of disaster. Yet when I looked at this picture again from afar and from here, I had a feeling of hope and optimism not merely because of India, but because also of other things that I saw that the tragedy which seemed inevitable was not necessarily inevitable, that there were many other forces at work, that there were innumerable men and women of goodwill in the world who wanted to avoid this disaster and tragedy, and there was certainly a possibility that they will succeed in avoiding it.

But to come back to India, we have, ever since I moved this Objectives Resolution before this House—a year and eleven months ago, almost exactly—passed through strange transitions and changes. We function here far more independently than we did at that time. We function as a sovereign independent nation, but we have also gone through a great deal of sorrow and bitter grief during this period and all of us have been powerfully affected by it. The country for which we were going to frame this Constitution was partitioned and split into two. And what happened afterwards is fresh in our minds and will remain fresh with all its horrors for a very long time to come. All that has happened, and yet, in spite of all this, India has grown in strength and in freedom, and undoubtedly this growth of India, this emergence of India as a free country, is one of the significant facts of this generation, significant for us and for the vast numbers of our brothers and sisters who live in this country, significant for Asia, and significant for the world, and the world is beginning to realise—chiefly I think and I am glad to find this—that India's role in Asia and the world will be a beneficent role; sometimes it may be with a measure of apprehension, because India may play some part which some people, some countries, with other interests may not particularly like. All that is happening, but the main thing is this great significant factor that India after a long period of being dominated over has emerged as a free sovereign democratic independent country, and that is a fact which changes and is changing history. How far it would change history will depend upon us, this House in the present and other Houses like this coming in the future who represent the organised will of the Indian people.

That is a tremendous responsibility. Freedom brings responsibility; of course there is no such thing as freedom without responsibility. Irresponsibility itself means lack of freedom. Therefore we have to be conscious of this tremendous burden of responsibility which freedom has brought : the discipline of freedom and the organised way of working freedom. But, there is something even more than that. The freedom that has come to India by virtue of many things, history, tradition, resources, our geographical position, our great potential and all that, inevitably leads India to play an important part in world affairs. It is not a question of our choosing this or that; it is an inevitable consequence of what India is and what a free India must be. And,

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because we have to play that inevitable part in world affairs, that brings another and greater responsibility. Sometimes, with all my hope and optimism and confidence in my nation, I rather quake at the great responsibilities that are being thrust upon us, and which we cannot escape. If we get tied up in our narrow controversies, we may forget it. Whether we forget it or not, that responsibility is there. If we forget it, we fail in that measure. Therefore, I would beg of this House to consider these great responsibilities that have been thrust upon India, and because we represent India in this as in many other spheres, on us in this House, and to work together in the framing of the Constitution or otherwise, always keeping that in view, because the eyes of the world are upon us and the hopes and aspirations of a great part of the world are also upon us. We dare not be little; if we do so, we do an ill-service to this country of ours and to those hopes and aspirations that surround us from other countries. It is in this way that I would like this House to consider this Constitution : first of all to keep the Objectives Resolution before us and to see how far we are going to act up to it, how far we are going to build up, as we said in that Resolution, "an Independent Sovereign Republic, wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people, and wherein shall be guaranteed and secured to all of the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought and expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and this ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

I read that last clause in particular because that brings to our mind India's duty to the world. I should like this House when it considers the various controversies—there are bound to be controversies and there should be controversies because we are a living and vital nation, and it is right that people should think differently and it is also right that, thinking differently when they come to decisions, they should act unitedly in furtherance of those decisions. There are various problems, some very important problems, on which there is very little controversy and we pass them—they are of the greatest importance—with a certain unanimity. There are other problems, important no doubt, possibly of a lesser importance, on which we spend a great deal of time and energy and passion also, and do not arrive at agreements in that spirit with which we should arrive at agreements. In the country today, reference has been made—I will mention one or two matters—to linguistic provinces and to the question of language in this Assembly and for the country. I do not propose to say much about these questions, except to say that it seems to me and it has long seemed to me inevitable that in India some kind of re-organisation should take place of provinces, etc., to fit in more with the cultural, geographical and economic condition of the people and with their desires. We have long been committed to this. I do not think it is good enough just to say linguistic provinces; that is a major factor to be considered, no doubt. But there are more important factors to be considered, and you have therefore to consider the whole picture before you proceed to break up what we have got and re-fashion it into something new. What I would like to place before the House is that, important from the point of view of our future life and governance as this question is, I would not have thought that this was a question of that primary importance, which must be settled here and now today. It is eminently a question which should be settled in an atmosphere of good-will and calm and on a rather scholarly discussion of the various factors of the case. I find, unfortunately, it has raised a considerable degree of heat and passion and

when heat and passion are there, the mind is clouded. Therefore, I would beg of this House to take these matters into consideration when it thinks fit, and to treat it as a thing which should be settled not in a hurry when passions are roused, but at a suitable moment when the time is ripe for it.

The same argument, if I may say so, applies to this question of language. Now, it is an obvious thing and a vital thing that any country, much more so a free and independent country, must function in its own language. Unfortunately, the mere fact that I am speaking to this House in a foreign language and so many of our colleagues here have to address the House in a foreign language itself shows that something is lacking. It is lacking; let us recognise it; we shall get rid of that lacuna undoubtedly. But, if in trying to press for a change, an immediate change, we get wrapped up in numerous controversies and possibly even delay the whole Constitution, I submit to this House it is not a very wise step to take. Language is and has been a vital factor in an individual's and a nation's life and because it is vital, we have to give it every thought and consideration. Because it is vital, it is also an urgent matter; and because it is vital, it is also a matter in which urgency may ill-serve our purpose. There is a slight contradiction. Because, if we proceed in an urgent matter to impose something, may be by a majority, on an unwilling minority in parts of the country or even in this House, we do not really succeed in what we have started to achieve. Powerful forces are at work in the country which will inevitably lead to the substitution of the English language by an Indian language or Indian languages in so far as the different parts of the country are concerned; but there will always be one all-India language. Powerful forces are also working at the formation of that all-India language. Language ultimately grows from the people; it is seldom that it can be imposed. Any attempt to impose a particular form of language on an unwilling people has usually met with the strongest opposition and has actually resulted in something the very reverse of what the promoters thought. I would beg this House to consider the fact and to realize, if it agrees with me, that the surest way of developing a natural all-India language is not so much to pass resolutions and laws on the subject but to work to that end in other ways. For my part I have a certain conception of what an all-India language should be. Other people's conception may not be quite the same as mine. I cannot impose my conception on this House or on the country just as any other person will not be able to impose his or her conception unless the country accepts it. But I would much rather avoid trying to impose my or anyone else's conception but to work to that end in co-operation and amity and see how, after we have settled these major things about the Constitution etc., after we have attained an even greater measure of stability, we can take up each one of these separate questions and dispose of them in a much better atmosphere.

The House will remember that when I brought that motion of the Objectives Resolution before this House, I referred to the fact that we were asking for or rather we were laying down that our Constitution should be framed for an Independent Sovereign Republic. I stated at that time and I have stated subsequently this business of our being a Republic is entirely a matter for us to determine of course. It has nothing or little to do with what relations we should have with other countries, notably the United Kingdom or the Commonwealth that used to be called the British Commonwealth of Nations. That was a question which had to be determined again by this House and by none else, independently of what our Constitution was going to be. I want to inform the House that in recent weeks when I was in the United Kingdom, whenever this subject or any allied subject came up for a private discussion—there was no public discussion or decision because the Commonwealth Conference which I attended did not consider it at all in its sessions—but inevitably

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there were private discussions, because it is a matter of high moment not only for us but for other countries as to what, if any, relation we should have, what contacts, what links we should bear with these other countries. Therefore the matter came up in private discussion. Inevitably the first thing that I had to say in all these discussions was this that I could not as an individual—even though I had been honoured by this high office of Prime Ministership—I could not in any way or in any sense commit the country—even the Government which I have the honour to represent could not finally decide this matter. This was essentially a matter which the Constituent Assembly of India alone can decide. That I made perfectly clear. Having made that clear, I further pointed out this Objectives Resolution of this Constituent Assembly. I said it is open of course to the Constituent Assembly to vary that Resolution as it can vary anything else because it is Sovereign in this and other matters. Nevertheless that was the direction which the Constituent Assembly gave to itself and to its Drafting Committee for Constitution, and so long as it remains as it is, and I added that so far as I knew it would remain as it is (*cheers*) —that Constitution would be in terms of that Objectives Resolution. Having made that clear, Sir, I said that it has often been said on our behalf that we desire to be associated in friendly relationship with other countries, with the United Kingdom and the Commonwealth. How in this context it can be done or it should be done is a matter for careful consideration and ultimate decision naturally on our part by the Constituent Assembly, on their part by their respective Governments or peoples. That is all I wish to say about this matter at this stage because possibly in the course of this session this matter no doubt will come up before the House in more concrete form. But in whatever form it may come up whether now or later, the point I should like to stress is this, that it is something apart from and in a sense independent of the Constitution that we are considering. We pass that Constitution for an Independent Sovereign Democratic India, for a Republic as we choose, and the second question is to be considered separately at whatever time it suits this House. It does not in any sense fetter this Constitution of ours or limit it because this Constitution coming from the people of India through their representatives represents their free will with regard to the future governance of India.

Now, may I beg again to repeat what I said earlier and that is this : that destiny has cast a certain role on this country. Whether anyone of us present here can be called men or women of destiny or not I do not know. That is a big word which does not apply to average human beings, but whether we are men or women of destiny or not, India is a country of destiny (*cheers*), and so far as we represent this great country with a great destiny stretching out in front of her, we also have to function as men and women of destiny, viewing all our problems in that long perspective of destiny and of the World and of Asia, never forgetting the great responsibility that freedom, that this great destiny of our country has cast upon us, not losing ourselves in petty controversies and debates which may be useful but which will in this context be either out of place or out of tune. Vast numbers of minds and eyes look in this direction. We have to remember them. Hundreds of millions of our own people look to us and hundreds of millions of others also look to us; and remember this, that while we want this Constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop a Nation's growth, the growth of a living vital organic people. Therefore it has to be flexible. So also, when you pass this Constitution you will, and I think it is proposed, lay down a period of years—whatever

that period may be—during which changes to that Constitution can be easily made without any difficult process. That is a very necessary proviso for a number of reasons. One is this : that while we, who are assembled in this House, undoubtedly represent the people of India, nevertheless I think it can be said, and truthfully, that when a new House, by whatever name it goes, is elected in terms of this Constitution, and every adult in India has the right to vote—man and woman—the House that emerges then will certainly be fully representative of every section of the Indian people. It is right that that House elected so—under this Constitution of course it will have the right to do anything—should have an easy opportunity to make such changes as it wants to. But in any event, we should not make a Constitution such as some other great countries have, which are so rigid that they do not and cannot be adapted easily to changing conditions. Today especially, when the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable to-morrow. Therefore, while we make a Constitution which is sound and as basic as we can, it should also be flexible and for a period we should be in a position to change it with relative facility.

May I say one word again about certain tendencies in the country which still think in terms of separatist existence or separate privileges and the like ? This very Objectives Resolution set out adequate safeguards to be provided for minorities, for tribal areas, depressed and other backward classes. Of course that must be done, and it is the duty and responsibility of the majority to see that this is done and to see that they win over all minorities which may have suspicions against them, which may suffer from fear. It is right and important that we should raise the level of the backward groups in India and bring them up to the level of the rest. But it is not right that in trying to do this we create further barriers, or even keep on existing barriers, because the ultimate objective is not separatism but building up an organic nation, not necessarily a uniform nation because we have a varied culture, and in this country ways of living differ in various parts of the country, habits differ and cultural traditions differ. I have no grievance against that. Ultimately in the modern world there is a strong tendency for the prevailing culture to influence others. That may be a natural influence. But I think the glory of India has been the way in which it has managed to keep two things going at the same time : that is, its infinite variety and at the same time its unity in that variety. Both have to be kept, because if we have only variety, then that means separatism and going to pieces. If we seek to impose some kind of regimented unity that makes a living organism rather lifeless. Therefore, while it is our bounden duty to do everything we can to give full opportunity to every minority or group and to raise every backward group or class, I do not think it will be a right thing to go the way this country has gone in the past by creating barriers and by calling for protection. As a matter of fact nothing can protect such a minority or a group less than a barrier which separates it from the majority. It makes it a permanently isolated group and it prevents it from any kind of tendency to bring it closer to the other groups in the country.

I trust, Sir, that what I have ventured to submit to the House will be borne in mind when these various clauses are considered and that ultimately we shall pass this Constitution in the spirit of the solemn moment when we started this great endeavour.

The Assembly then adjourned for Lunch till Three of the Clock.

The Constituent Assembly reassembled after lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Giani Gurmukh Singh Musafir (East Punjab: Sikh): Mr. President, like my Honourable friend Shri Deshbandhu Gupta, I cannot say that Dr. Ambedkar, President of the Drafting Committee does not deserve any congratulation. On several matters he deserves congratulation for several reasons and the Committee's labour in framing this first constitution is certainly praise-worthy. In spite of that, if anybody discovers any error, he mentions it, according to the measure of his understanding.

Now I want to say something regarding Article 5 which is embodied in the Part relating to the rights of citizenship. Some of my friends have already drawn our attention to the fact that it would be very difficult for illiterate people to appear before a magistrate for filing their declarations. But I look at it also from another point of view. From both points of view, some sort of amendment is essential, because in this Article no distinction has been made between a foreigner and the Hindus and the Sikhs coming from Pakistan. Those that are still perforce in Pakistan will have no right of acquiring citizenship after this Constitution has been framed. I think this Article should be so amended that they might be regarded as the citizens of this land, whenever they come here. There is yet another point. Just at present Non-Muslims are coming from East Bengal. If, therefore, any provision is made in this Constitution to the effect that they would not be able to come, after this Constitution has been passed, then the process of their migration will gain momentum. We are not able to look fully well after the refugees who have come here already. From this point of view, too, I consider it expedient that suitable amendment should be made in this item.

Another point which I want to mention is regarding the Fundamental rights, namely the one which concerns our basic rights. They have been stated in grandiloquent style, but the many limitations made therein have lessened the grandiloquence. Seth Damodar Swarup had moved an amendment on behalf of his party, which was lost. The object of his amendment was to point out that this Assembly which is not elected on the basis of joint electorate and adult franchise, is not representative of the masses; but we did not agree with him and the House rejected his amendment. But this much is very clear that although our Assembly was not elected on the basis of joint electorate and adult franchise, yet this Constituent Assembly has to look to the interest of the masses at the time of framing the constitution. Articles 9 to 12, where the people's rights have been embodied, answer the objection raised by Seth Sahib. For instance, there is equality of right on the basis of religion, race or caste, meaning thereby that there shall be no discrimination on grounds of Caste. Untouchability is abolished. Freedom of speech is guaranteed and in awarding punishment, no discrimination shall be made on grounds of creed or caste. All these things have been incorporated and they are all very good; but I have objection against some of the limitations. For example, in Article 13, freedom of speech has been guaranteed, freedom of movement throughout the country without any distinction has been given and there is freedom to acquire and to dispose of property—all these things have been embodied. But the limitation imposed in item (5) of Article 13 should not have been there. In the face of these limitations, all these grand clauses which have been embodied in it will lose some of their grandeur. Even now I have this complaint, any body may admit it or not; but I strongly believe, that those of our brethren who have come from Pakistan—although in some places they have been treated well; yet distinction has certainly been made and their rehabilitation has not been liked. Wherever they have gone, difficulties have certainly been raised

in rehabilitating them freely and comfortably. Therefore from the point of view of refugee problem, too, there should not be any limitation regarding the freedom of movement throughout the country and of acquiring and disposing of property. Those who cannot acquire plots should have the liberty of acquiring cultivable lands. I have received telegrams from everywhere that this limitation should be done away with so that this old evil of disunion might disappear.

Third thing which I want to say is about the language. This is a very important question but I had not thought it to be so intricate as made out by our learned men and research scholars. Till the time this question had not come to me in its present form, I never thought there was any difference between Hindi and Hindustani. It never occurred to me that Hindi is a separate language from Hindustani. In this connection I recall a Panjabi couplet of my own which means "Ignorance was bliss to me; Knowledge has landed me into a difficult situation" or, in other words, I wish I had not known about it; now when I have known it I am in a puzzle what to do. But one thing is quite clear. As a principle we should agree to keep only one script in our Constitution. There should be one script and one language for the whole of India, as has been stated by our friend Seth Govind Das Ji and several other speakers.

I also agree that our first constitution should be adopted in the National language. This is my firm faith and my confirmed opinion. So far as language is concerned, it undoubtedly varies from place to place; there is no doubt about it. There seems to be some difficulty about language question. Some Honourable members have gone to the extent of threatening that if a particular decision is taken they would stop attending the House or would have to take some steps as a protest. In our armed forces, Roman script, Urdu script as well as Devnagri script are prevalent. If we have to keep only one script than we ought to see in which of these three scripts all our languages can be written and reproduced correctly. I would go to this extent, that if all the advocates of provincial languages so agree, then I would be prepared for the position that Bengalis should leave their Bengali script, Tamilians and Telegus give up their scripts and Punjabis leave their Punjabi script and all these languages should be written in Devnagri script and I would have no objection. Under the present conditions however this seems to be somewhat difficult, though it would create a sense of one-ness. If all of us differ in every other respect, at least we must be one in one respect. We must unite on one point, that is we must agree to have one common script, in which all different languages may be written. If it is done we shall be saved from several perplexities. In case this is not possible, then every provincial language must be given equal importance in that particular province.

Then remains the question of language; regarding that I want to say this that I have seen all the translations of this draft constitution. I have seen its Hindi translation, and have read its Urdu and Hindustani translations. I have used the word "seen" about Hindi translation for the reason that I have talked to several of my friends who are supporters of Hindi. None of them could explain the purport of the Hindi translation to me. Our great poet of Panjab Dr. Iqbal, used to write his poems in Persian. I have read several of his books in Persian but when he realised that his Persian poetry was like a wild flower for the people, out of which nobody got any fragrance, then he began writing in Urdu. If you see the language of his Urdu poems, you will find that he was obliged to use a simple diction so that his thoughts may reach the people. Just listen; I repeat one of his couplets to you:—

"Iqbal bara updeshak hai,
Man baton men moh leta hai,
Guftar ka woh ghazi to bana
Kirdar ka ghazi ban no saka."

[Giani Gurmukh Singh Musafir]

Now tell me what you will call this language—Hindi, Urdu or Hindustani? To which language do the words 'updeshak', 'Man', and 'Moh' belong? If the language in which my friend, Chaudhry Ranbir Singh, delivered his speech the other day, is Hindi then I am a supporter of Hindi. Now, we have to see what is most suitable and most practicable. If you ask me about the Panjab I can tell you that all those papers, which are supporters of Hindi, are printed in Urdu script. It is not a question of personal or individual convenience but of finding a most suitable and practicable solution.

So what I mean, is that our language should be easy and commonly understandable. I suggest that a committee be appointed for coining the terms, and after the terms have been coined and the simplification of language decided upon then I think there will be no difficulty in the way of solving the language question. There is a short-coming in us all and particularly in Panjabis, that we tend to give a religious tinge to every problem. We pitch ourselves against each other on the basis of religion. The matter may be simple but by giving it a religious colour we create a mess.

There is a talk of division of provinces on linguistic basis. On that point our constitution is almost silent; only a vague hint has been given. In the Panjab this question too has taken a religious turn although it is a very simple one. So, as was said by one speaker in the morning, it is a controversial matter. It should be postponed, and this principle should be accepted that that if provinces are formed on a linguistic basis, then all the developed languages will be given due consideration.

My time is almost finished, but I want to say something about the minorities. I have not given much thought to this question because I have been a Congress worker. Even now I am the President of the Provincial Congress. To my mind, rights of the minorities will be quite safe in the hands of the Congress Governments. But at present the question of reservation is before us. This is true that on the basis of religion I belong to a minority community, and I am proud of the fact that I have never viewed this question from a communal angle. Regarding this, I would like to state that the Sikh community has always been proud of the fact that it has bravely made sacrifices in making the country a strong nation. That was the reason which prompted revered Pandit Malviyaji to remark that every Hindu family must have a Sikh son. Shri Savarkar had once advised the co-religionists of Dr. Ambedkar that if they wished to change their religion they could become Sikhs. I had then enquired from Shri Savarkarji as to how could he, being himself a Hindu and an Arya Samajist, give such advice? (A voice—Savarkar is not an Arya Samajist.) Then, I withdraw my words. Anyway, he replied to me that though he had not studied Sikhism, this much he knew that when he was at the Andamans there were several old and distinguished Sikh prisoners with him, in whom he had found intense patriotism, passion for national service and sacrifice in abundance. Judged from that he could say that they were good people and for that reason he had advised co-religionists of Dr. Ambedkar to embrace Sikhism. From the point of view of the minorities themselves, I venture to say that without weightage reservation is of no use. I think that if our hearts are freed from mutual suspicions and we gain each other's confidence then several provisions can be embodied which would help us in forging one nation. Governors and the President can be vested with the power of nomination in cases where minorities fail to secure their adequate place under election. If any such method is devised whereby reservation is done away with, then it would be a test of the majority also, as well as a step forward towards forging one nation. We have seen how the reservation and separate electorates have worked under the British regime; instead of becoming one nation, the country had been torn to pieces. This treatment simply aggravated the malady. We should take a

lesson from that; we should know what steps we ought to take for knitting the country into one nation. Majority community ought to find out the ways for filling up the shortage, if any, in the representation of the minorities.

With this end in view let us proceed in a way whereby one united nation may emerge. There is no time left; otherwise I had to say much more on this subject.

Mr. Vice-President (Dr. H. C. Mookherjee): I have received notice of an amendment from Mr. Naziruddin Ahmad to the following effect:—

"That the Draft Constitution be referred to a Select Committee consisting of such members, elected or nominated by the Honourable the President in such manner as he thinks proper, to report thereon by such date as the Honourable the President thinks proper."

I rule it out of order on the ground that in the rules for the consideration and passing of the Draft Constitution there is no provision for reference to a Select Committee. Acceptance of this amendment would amount to an amendment of the rules already framed. This cannot be done without reference to the Steering Committee. Not only that. Rule 31(4) says:

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

I consider this a dilatory amendment. I therefore rule it out of order.

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Mr. Vice-President, Sir, it is indeed a great privilege to associate myself in rendering tribute to Dr. Ambedkar and the other members of the Drafting Committee for the stupendous task they have undertaken to bring out this Draft Constitution. They all deserve our best thanks.

To me, the structure of the Constitution depicted in this draft looks good though it requires certain modifications in some details and important matters. By this Constitution, India is to have unity in diversities, India with diverse races, colours, creeds languages and cultures and with varied degrees of civilisation is being moulded into one Nation that will work together for the good of the common whole. This is not a small task. India is like the different States in the continent of Europe which have not been able to form a united sovereign country. But by the help of God and the wisdom given to our leaders India is having unity in the midst of diversities. This unity is not to be achieved by eliminating all diversities and putting all component parts into one mould by a stroke of the pen, for such an attempt will cause terrible revolution, and great distress everywhere. The process for achieving the unity of India is by evolution, as provided in this draft constitution.

The provisions for freedom of worship etc. etc. for minorities and for certain special areas and for hill tribes are the necessary stages for evolving unity in the midst of diversities. The wisdom of our leaders and of the majority community in acknowledging the necessity for allowing diversities in this unity structure is greatly appreciated and will be greatly appreciated by all. This is God's own method. God's own creation everywhere is unity with diversities. I thank Sardar Patel, the Chairman of the Advisory Committee for Minorities etc. He appreciated the needs of minorities and special tribal hill areas.

I must especially thank the Drafting Committee for accepting the draft for the creation of District Councils with autonomy in the hill districts in Assam which in the Sixth Schedule are called autonomous districts. These hill districts, inhabited by tribal hill people, will under this constitution be able to develop themselves according to their own genius and culture. The result, I believe, will be charming if these autonomous districts are nurtured to develop themselves in their own way without disturbing the main purpose of unity underlying the constitution presented in the draft. These tribes, though small in themselves, have been self-governing bodies from time immemorial. The India of tomorrow will surely stand to gain if the schemes for development of

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these areas are duly financed by the Government of India as proposed in the draft. Certain improvements in the Sixth Schedule will have to be made in the draft. I hope the House will accept the amendments which will be moved in due course.

While I fully appreciate the attitude expressed by Dr. Ambedkar and others as regards the strengthening of the Centre, I have to express that my views are very strong against the unbalanced strengthening of the Centre at the cost of causing weakness to the component parts thereof. It will be like the picture of an unbalanced man with a very big head but with bony and lean limbs. Such a head in that very condition will not be able to stand.

In perusing the printed amendments to Article 131 it appears that the Drafting Committee wants that the Governor should be appointed by the President. Powers are therefore proposed to be centralised. I hope the Drafting Committee will revise their view and find it undesirable to move it. I think this country has long given up the idea of nominated governorship with discretionary powers. The Drafting Committee has also given an alternative proposal for the appointment of Governors from a panel of four candidates to be elected by Members of the Legislative Assembly of the State. The argument of some of the members of the Committee is that the co-existence of an elected Governor and a Prime Minister responsible to the Legislature might lead to friction and consequent weakness in administration;-but at the same time the existence of a nominated Governor with discretionary powers might cause obstruction and deadlock. I have had experience as a Minister with eight nominated Governors. I am strongly of the opinion that an elected Governor will be a better substitute. This matter will be discussed at length when the amendments to Article 131 are moved in this House. I shall have occasion to say more about this then.

In the matter of Finance this draft is very unsatisfactory—particularly in reference to smaller Provinces. It does not give a fair deal to the Provinces. Poor Provinces like Assam and Orissa have reasons to be particularly disappointed. Those Provinces should not be weakened financially. Even one weak limb of the body will make the whole body weak. If India is to live and prosper, the States which are its component parts should function as healthy organs of the body politic of India. To come to the point, I want to say that the provisions of Articles 253 and 254 cannot be appreciated by us. They are couched almost in the same language as that of section 140 of the Government of India Act of 1935. The good wishes of the Government of India have so far remained a dead letter while the backward Provinces like Orissa and Assam remain where they were before. Even this year, Sir, our Assam Province is being greatly hit by the financial policy of the Central Government. We were in great hopes that our most essential needs such as building up of institutions for educating and training personnel in various nation-building activities would be satisfied, but we are told that these have to be postponed or delayed. The construction of strategic highways and roads absolutely essential for giving relief to our distressed people living on the border of Pakistan and for the protection of the country are proposed not to be pushed on with the same rapidity as it is essentially necessary to be done for we are told that not even one-fourth of the money required for these schemes for the current year will be available to us. The great Congress organisation has declared that our goal is a co-operative commonwealth, but when rural centres for an all round development of the villages are proposed to be opened on co-operative principles, the money required for the fulfilment of the schemes in this connection is not forthcoming. Our Assam Government in order to raise the maximum finances it is capable of doing, within the provincial list, has exhausted all the sources of taxation; but our province is yet faced with a deficit of about a crore, while its substantial income is only over four crores. But Assam would have had enough to bear its own responsibilities without begging from the Centre, had not the Central Government taken away the export duty on tea. Tea and petroleum are produced in Assam. If the excise and export duties on

tea and petroleum are allotted to us, which give about eight crores of rupees annually from Assam alone to the coffers of the Government of India, we shall have enough to finance our development schemes all round. Why should not this export duty be given to Assam, at least the largest share of it, every year?

An Expert Committee was appointed to investigate these questions and the Premier of Assam, Mr. G. N. Bardoloi himself led the deputation before the Committee. While the Committee conceded that a portion of the export duty on jute could be given to Bengal (a small portion of which comes to Assam also) and that a portion of the excise duty on tobacco might be given to the Province of Madras, the Committee did not consider it desirable to concede anything in favour of Assam on account of tea and petroleum produced in Assam. Is this just and equitable? Assam is kept under the system of eternal doles from the Centre. It passes our comprehension why this difference is made. Is it because Assam does not have a strong voice in the Centre? For many years during the rule of the British, Assam has been crying hoarse against this injustice committed by the central financial authorities in the past; but all our cries and condemnation of that injustice have gone unheeded by the Centre. Why reduce this producing province which could have had enough to support itself to a state of a beggar perpetually? Sir, I hope any strengthening of the Centre financially in this manner while robbing a province of its legitimate right will not be supported by any one. I believe that this just House with reasonable minds and sympathetic hearts will see that the province gets a fair deal. Facts should be faced.

I think myself that the authorities have been so busy with other matters that their attention could not be drawn in the past to this matter of life and death for Assam. We are today appealing to all the Honourable Members to come to our rescue at this time. Let it not be forgotten that Assam is a Frontier province which is subject to aggression from all sides. It is the duty of the whole Union to attend to this from the very beginning before evil days come. It is also very necessary for India to keep the bordering areas supplied with the necessities of life in order to keep them satisfied, otherwise adverse elements will cause great trouble which may cost India ten times more than the amount of money which may be spent during peaceful time. It will be a shortsighted policy to deprive our Assam province of its export duty on tea and to reduce its legitimate share of excise duties on tea and petroleum etc. In the past the bureaucratic Government overlooked the claims of backward provinces like Assam or Orissa, but how can we imagine that this Constituent Assembly will allow the perpetuation of the same wrong which was done by the alien Government? I hope, Sir, that when the amendments to right this wrong are brought before this House, they will receive full support from all the Members of this august Assembly.

Before I close, Sir, I must also say that adult franchise is necessary as the basis of election. The people everywhere must feel that freedom has come to them and that they have a share in the shaping of the administration of the country. This has been the hope given by the Congress in the past and any deviation from this principle will cause disappointment and arouse agitation in the country. It is true that the common man in the villages does not understand much, but it is the duty of the politicians to educate the common man in the right direction. We have adopted democratic principles, and the salvation of our country is to educate the common man and trust that he will be guided to exercise his right of franchise in the right direction.

I do not want to take the time of this House with other observations and criticisms which I would have liked to make, but before I conclude, I want to say that if we are going to build up a democratic State, we must make every one in this country, however humble and poor he may be, feel that he has a share in the making of a better country. We must cultivate the spirit of fraternity and this should have full sway in this country of ours

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so that every one of us, however humble and low we might be, can feel proud of this country to which we belong. God also will no doubt help us when we are saturated with this spirit of honesty and fraternity.

Mr. Mohammed Ismail Sahib (Madras: Muslim): Mr. Vice-President, Sir, I thank you, in the first instance, for having allowed me some time though almost at the last stage of this general debate. I shall touch only on a few of the points I wanted to place before the House and try to compress my ideas within the short time which I understand has been kindly allowed to me by you.

Sir, it is indeed a great speech in which the Honourable Dr. Ambedkar has commended the consideration of the Draft Constitution to the House. For lucidity, for persuasiveness, impressiveness and logic I do not think that it could be beaten. All congratulations to him. But this does not mean that one is agreeing with everything that is said by him in the speech. For example, take the question of provincial autonomy, the relationship between the Centre and the States. He pleads more really for a unitary type of State. He says that a balance has been struck between federalism and the unitary type of Government. But I am inclined to think, when I go through the Draft Constitution, that the emphasis is too much upon the unitary nature of the State. In my view, this is not conducive to the happiness and prosperity of the country. Ours is a vast country of great distances and huge population. However much the Centre may be anxious to accord uniform treatment to the various parts of the country, still, in the very nature of things, there will be draw-backs and shortcomings. This will naturally lead to discontent, and conflict. It is for this reason that many political thinkers have been of the view that a federal type of Government is more suitable than anything else for such a country as ours. We in India need not be afraid of anything like disintegration or undue clashes and conflicts between the various parts of the country. The example of the United States of America has been cited. What has happened there really? This country which has got more than forty States, all autonomous, have, as one unit, stood two of the severest wars ever known to the history of mankind, and these States have also stood together and have dealt with and confronted successfully the stress and strain of post-war problems that faced them after the last two wars. Take again the case of Russia. The States of Russia are called autonomous Republics. It is said that they have got even control over external affairs. What has happened? That country with all these autonomous republics, has been able to withstand the deadly and terrible onslaught of the last war, and today she is as one big country, able to pull on in the face of so many hardships and difficulties. Therefore, it is not so much the type of Government, or the number of powers which we give to the Centre that really matters. It is the character of the personnel which runs the Government, and it is the character of the people that really counts in these matters. Sir, in spite of the Russian States being autonomous republics, what has happened? Russian has become totalitarian. The Centre has come, in actual fact, to be over-weighted with powers. That is human nature. Here, it is said, on occasions, our Constitution will become unitary. But, in the nature of things, when once it becomes unitary, the tendency will be to stay on the unitary type of Government. I say that the federal system is more suited to the conditions of our country than the unitary type.

The conditions in different parts of the country are different. Therefore they have to be dealt with by the people who are in more intimate touch with those conditions from day to day. In this connection, I shall just touch on one point. That is to say, when the province is deprived of so much of its

tonomous powers, there is a proposal which does not agree with this frame-ork, viz., that of the election of the Governor through adult franchise. The overnor himself is only a constitutional head if he is not a figure-head and to go through all the paraphernalia and trouble of having him elected by tens of millions of people in a province is not necessary and it really bristles with possible difficulties and probable hardships apart from huge expenditure it would involve. The Governor must of course be elected by certain agencies in the provinces and States themselves and that is in keeping with the provincial autonomy of my pleading. Such an agency might take the form of an electoral college consisting probably of members of the legislature in a province, members of the municipalities and district boards and I would even go, if friends would like it, to the extent of including members of the Panchayat Board as well. After all it may mean only about fifty or sixty thousand voters in a big province while according to adult franchise it will run into crores, and when the Governor is also elected by the people through adult franchise it is only natural that on occasions he will come into conflict with the ministry which will claim to be the spokesmen of the people.

Regarding Fundamental Rights, the Mover of the Resolution said that the exceptions have not eaten up the rights, but as a matter of fact they have actually eaten up the rights. He says everyone of these exceptions can be supported by at least one decision of the Supreme Court of America. To say so is on a par with the argument advanced by the British politicians when the Government of India Act of 1935 was on the anvil of the Parliament in Great Britain. They said they were including in that Act things which were followed in Great Britain as a matter of convention. They said that things were there and they had come into being and therefore it was that they were putting them into that Act. To say that the Supreme Court has decided in a certain way, has decided that certain exceptions are quite legal and all right and therefore such exceptions must come into our Constitution—to say that is different from saying that the people will have the freedom of going to Supreme Court or Federal Court whenever a fundamental right is in question in doubt. This freedom of the people to go to the Federal Court even as against the Government will really imbue them with a sense of real freedom and that will also have a salutary check on the Government which is very necessary in democracy.

Some of my friends claimed that this Constitution is a political Constitution but really is it so—I don't know. It deals with untouchability, temple-entry and religious instruction. I don't blame the Constitution or its drawers for this. I say it is quite right in noting these things; but one important fundamental thing I want to refer to and that is regarding religious instruction. The Constitution says that religious instruction shall not be provided in any of the State schools. Taking this provision with the compulsory elementary education which is being introduced in almost all the provinces, it means that the Government is against religious instruction, it is against people getting instruction in their own religion even if they wanted it. Therefore until 15 years of age upto which age the children have to be sent to these elementary schools they shall not have an opportunity in these schools of having any instruction in religion. But it is the right of the people to have instructions in their respective religion. That right is not derogatory to the neutrality or secular nature of the State. The State would not impose any religious instruction upon people who do not like it. They only give facilities for the people if they want to give instruction to their children in their own religion.

Then, Sir, I have to refer to the question of minorities. Some friends said that reservation must go; some said it must go because it is not of much use and some said that reservation as such must go. They said that it was goodwill that was required and not reservation. It is really true that goodwill is required; it is essential even in the working of this elaborate bulky constitution

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and without goodwill any elaborate scheme will be of no avail. But on that plea goodwill might be taken as a substitute for many other provisions in the Draft Constitution; nevertheless, those provisions are there. Goodwill has to be grounded on something and it can't live on air. There has to be something for goodwill to be based upon and for it to grow and that is the elementary rights—fundamental rights and safeguards given to minorities. Therefore it is that my community wants this reservation though it alone does not satisfy their requirements. I don't mean to say that it satisfies the people who want representation in the legislatures. They want themselves to be given the right of really representing their views and the feelings and aspirations before the legislature. Will these people who are the occupants of these reserved seats under joint electorates be able to express the view of the community as such? When I say this we should not rake up the past and I don't want to refer to the past and kindle and stir up controversies and disputes. We should take up this question on its own merits—whether it is reasonable or not we should consider. In my view there should not only be reservation of seats but these seats should be filled up through separate electorates. I don't find any other alternative if you want to give the right to these minorities to express themselves before the majority community, before the country and before the legislature. This is all that is meant by this electorate. It is no barrier between one community and another and if there was any trouble in the past it was not due to this system of election, but it was due to other things. As I have told you, I don't want to enter into the past. Again, when we talk of these separate electorates communalism is brought forward. In this connection I would only give the House the benefit of a quotation from one of the Ministers, a Congress Minister in the Madras Assembly, about ten days ago. A question was put regarding communal representation for the admission of students to a certain college.

One of the Members put the question to the Minister:

"How is the Minister justified in preserving and fostering communalism even within the ranks of the Hindus themselves?"

Then the Minister for Education answers:

"It is not the Government that do it. It is there. The communities exist. It is an unwise man that does not take note of the things that exist. People are born and die in these various communities."

Then the Minister further added:

"The Government wanted to put an end to this communalism. But without giving equal opportunities to the various communities to come up that could not be done."

That is the view expressed by a Congress leader belonging to the majority community who is now working an important portfolio in one of the important provinces of the country.

Therefore, Sir, that is the position. There is no harm in recognising those communities and this is not a position peculiar to our country. When I was a young-man I used to follow the national movement of Egypt. When they first wanted independence, a community called the Copts came up. This community started a counter-movement. They wanted to be assured of their rights under independence and then Zaghlul Pasha, the leader of Egypt called those people and asked them to formulate their demands. The demands were brought forward in due course of time and he considered them. He then said that those demands alone would not secure the minority's rights and position; that they would not even give them the right or proper expression. He said that he was giving them more. That was how the minority was treated in that country. Until then, whenever there was anything about Egypt there

would be something about the Copts as well. But all this changed. From that day of settlement until now we do not hear the name of the Copts at all. Now they are a contented people. They are all living today as one people. I hope the House will consider this question in a dispassionate manner, excluding any emotionalism or sentiment from the subject.

Shri Algu Rai Shastri: (United Provinces: General): *[Mr. President, as there is only one hour left at our disposal I would request that the time for discussion be extended by a day. Many members have expressed a desire to speak and so far no closure has been moved. It appears that the House wants to have more discussion on the subject. The issue is of great importance and, as Shri Diwakar said yesterday, it should not be disposed of hurriedly. At least one day's extension should be given for its consideration. Only some of those persons whose names are already with you would like to speak. I beg to make one more submission. Sir, the entire time today has been given by you to those whom you consider to be the members of minority communities They have placed their view point before the House. Will you not now give an opportunity to those whom you consider to be members of majority communities to place their views? Some reasoned reply to objections raised here must be permitted to be made here so that the world may be influenced to believe that whatever decisions are being taken in this House, are based on reasoning and not on a majority vote. If any one wants to meet the objections raised here, he must be given an opportunity to do so. There is the question of language, the question of our relations with Great Britain and other problems of this kind. These are very important matters and require thorough elucidation in the House. I would, therefore request you kindly to give us one day more for discussion. We must have at least one day more so that others may also place their views on these matters.

Mr. Vice-President: You want one extra day!

Pandit Govind Malaviya: (United Provinces: General): May I support that request. I think we are discussing a very important matter, for which there will be no other opportunity and I think, even when three days have already been devoted to this, so long as there are a number of Members of this House who have yet to express their views before it on this matter, I think we shall be doing nothing wrong in extending the time.

The Honourable Shri B. G. Kher (Bombay: General): Tomorrow again a request will be made that one more day should be granted. There will be plenty of opportunities when amendments are moved and all these points could be brought out. We have been treated to a variety of views in different languages and sufficient light or darkness has been thrown on a subject which has been before us for two years. I sympathise with Members who want to speak and to be heard, but I do submit that there ought to be some finality to such general discussion and when you have already extended the time by one day I thought that was enough. I suggest there should be no more extensions.

Shri Mahavir Tyagi (United Provinces: General): As long as there is one Member who wants to record his opinion on this subject, he should be given a full opportunity to express himself. I therefore submit, that not only one, but if tomorrow we want another day, then another day must be given.

Mr. Vice-President: I have here the names of about forty gentlemen who want to speak. At the same time I have to point out that I have been keeping a note of the principal items touched upon by the previous speakers, and I find that they concern more or less six different points. Already about thirty Members have spoken and they have gone round these six different

*[ ] Translation of Hindustani speech

[Mr. Vice-President]

points. If the House is certain that the gentlemen who come here-after will be able to do something more than cover these six points, then there will be some justification. But I am in your hands. I am perfectly prepared to extend the time, provided you can convince me that something new will be contributed.

Pandit Govind Malaviya: Would you like us to submit to you a precis of the points we wish to raise?

Mr. Vice-President: Perhaps you have misunderstood me and that deliberately.

I have never suggested that I wanted a precis. But those who have sat down here and listened—you came only today and so you do not know the points that have been touched upon.....

Pandit Govind Malaviya: But I have taken the proceedings home and studied them!

Mr. Vice-President:...the Members whose names are already with me, if they can convince me or convince themselves that they have something new to contribute, then I am prepared to consider the proposition.

Mr. Hussain Imam: (Interruption).....

Shri Suresh Chandra Majumdar: (West Bengal: General) When there are forty names outstanding even a day's extension may not suffice. So you must go on for the whole week!

Shri Vishwambhar Dayal Tripathi: (United Provinces: General) I suggest two more days should be given for this discussion.

Mr. Vice-President: All right, I will give one day more. But I do hope the time will be used for some useful purpose.

Shri Alladi Krishnaswami Ayyar (Madras: General): Sir, before making a few remarks on the Draft Constitution, I should like to join in the tribute of praise to the Honourable Dr. Ambedkar for the lucid and able manner in which he has explained the principles of the Draft Constitution, though I owe it to myself to say that I do not share the views of my honourable Friend in his general condemnation of village communities in India. I must also express my emphatic dissent from his observation that Democracy in India is only a top-dressing on Indian soil. The democratic principle was recognised in the various indigenous institutions of the country going back to the earliest period in her history. Democracy in its modern form is comparatively recent even in European history, as its main developments are only subsequent to the French Revolution and to the American War of Independence. The essential elements of democracy as understood and practised at the present day are even of much later date and have gained currency and universal support during the last war and after its termination.

Before I proceed to make my remarks on the Draft Constitution, in view of certain observations of my honourable Friend Mr. T. T. Krishnamachari on the work of the Drafting Committee and the part taken by its members, I owe it to myself and to the House to explain my position. As a member of the Committee, in spite of my indifferent health, I took a fairly active part in several of its meetings prior to the publication of the Draft Constitution and sent up notes and suggestion for the consideration of my colleagues even when I was unable to attend its meetings. Subsequent to the publication of the draft, for reasons of health, I could not take part in any of its deliberations, and I can claim no credit for the suggestions as to the modifications of the draft.

In dealing with the Draft Constitution, it is as well to remember that the main features of the Constitution in regard to several particulars were settled by the Assembly after due consideration of the reports of various committees; this Assembly is not starting afresh after two years of work. I doubt if ever some of the Members who animadverted upon certain features of this constitution settled by this House could disclaim responsibility for the decisions already reached. The federal framework of the Constitution with an over-riding power in the Centre, the need for a concurrent list and the items therein, the composition of the Houses, the relative powers of the two Houses of Parliament and in the provincial legislatures, the mode of election of the President and of the Governors, the relationship between the legislature and the executive, the constitution and powers of the Supreme Court and of the Hight Courts, the fundamental rights to be guaranteed to the citizen and a number of other matters relating to the constitutional framework, were settled by this House or considered by the Committees appointed by this House. In so far as the Drafting Committee has embodied in the articles as framed the considered decisions of this Assembly, the Drafting Committee can in no way be responsible for the decisions already reached, while it may be quite open to the House to revise those decisions on special grounds. In regard to such of the provisions of the draft as have not been considered by this House, it is open to this House to come to any conclusion, consistently with the resolutions already reached and with the general framework of the Constitution.

The main criticisms on the Draft Constitution range under the following heads:—

Criticism 1.—It draws largely upon foreign constitutions and there is nothing indigenous about it. There is not much force in this criticism when it is remembered that federalism in its modern form is of recent growth, since the American Revolution and America has furnished the example to all the later federations. It cannot be denied that there is a strong family resemblance between the several federations and that each later constitution has drawn upon and profited by the experience and working of the earlier federal constitutions of the world. In this connection, it is as well to remember that even the Soviet Constitution has not departed from certain accepted principles of federal government.

Criticism 2.—The Centre is made too strong at the expense of the units. In view of the complexity of industrial, trade and financial conditions in the modern world and the need for large scale defence programmes, there is an inevitable tendency in every federation in the direction of strengthening the federal government. The Draft Constitution in several of its provisions has taken note of these tendencies instead of leaving it to the Supreme Court to strengthen the Centre by a process of judicial interpretation. I might point out in this connection that the U.S. Supreme Court, by the wide interpretation which it has put upon the General Welfare clause as well as on the trade and commerce clause in the Constitution, has practically entered into every sphere of state activity, so that it may be in a position to regulate the economic activities, the relationship between capital and labour, the hours of labour and so on, taking advantage of these two clauses.

Criticism 3.—The existence of a large list of concurrent subjects might lead to the Centre encroaching upon the provincial sphere and giving a unitary bias or character to the constitution. A study of the several items in the Concurrent List shows that they mainly relate to matters of common concern all over India. Whatever criticisms might be levelled against the British administration in India, the enactment of the great codes which has secured uniformity of law and legal administration has been its special merit. It is common knowledge that even the Indian States have adopted the great

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Indian Codes. Instead of not having a Concurrent List or curtailing the list of concurrent subjects, I would advocate the Concurrent List being extended and applied to the States in Part III. The existence of a Concurrent List in no way detracts from the federal character of the constitution, there being an independent provincial list of subjects.

Criticism 4.—The constitution does not give sufficient importance to village communities which are an essential feature of India's social and political life. With the large powers vested in the provincial or state legislatures in regard to local self-government and other matters, there is nothing to prevent the provincial legislatures, from constituting the villages as administrative units for the discharge of various functions vested in the State governments.

Criticism 5.—The criticism regarding the fundamental rights was that they are hedged in by so many restrictions that no value can be attached to the rights guaranteed under the constitution. The great problem in providing for and guaranteeing fundamental rights in any constitution is where to draw the line between personal liberty and social control. True liberty can flourish only in a well ordered state and when the foundations of the state are not imperilled. The Supreme Court of the U.S.A. in the course of its long history has read a number of restrictions and limitations based upon the above principle into the rights expressed in wide and general terms. The Draft Constitution, instead of leaving it to the courts to read the necessary limitations and exceptions, seeks to express in a compendious form the limitations and exceptions recognised in any well ordered state. It cannot be denied that there is a danger in leaving the courts, by judicial legislation so to speak, to read the necessary limitations, according to idiosyncracies and prejudices it may be of individual judges.

The problem of minorities has been solved by common agreement in a manner satisfactory to the various parties concerned, and the draft Constitution merely seeks to give effect to the agreement reached. As has been pointed out in the spirited address of our Prime Minister this morning, while regimented unity will not do, nothing should be done which will tend to perpetuate the division of the nation into minorities and to prevent the consolidation of the nation.

The next criticism is that the common man is ignored and there is no socialistic flavour about the Constitution. Sir, the Constitution, while it does not commit the country to any particular form of economic structure or social adjustment, gives ample scope for future legislatures and the future Parliament to evolve any economic order and to undertake any legislation they choose in public interests. In this connection, the various Articles which are directive principles of social policy are not without significance and importance. While from the very nature they cannot be justiciable or enforceable legal rights in a court of law, they are none the less, in the language of Article 29, fundamental in the governance of the country and it is the duty of the State to apply the principles in making laws. It is idle to suggest that any responsible government or any legislature elected on the basis of universal suffrage can or will ignore these principles.

The financial provisions in the draft Constitution have also come in for strong comment from my honourable friend Shri T. T. Krishnamachari. While an independent source or sources of revenue are certainly necessary for the proper functioning of a federal government, there is a distinct tendency, however, in the several federations, for the Central Government to act as the taxing agency, taking care to make adequate provision for the units sharing in the proceeds as also for the central or national Government granting subsidies. After all, it cannot be forgotten that the tax payer is the individual

citizen or a corporation—whichever the taxing agency might be—and the multiplication of taxing agencies is not a matter of convenience to the citizens. I doubt whether in the present uncertain state of the country it is possible to overhaul the whole financial structure and attempt a re-distribution on entirely new lines. That is why a provision has been made for a Financial Commission at the end of ten years. Possibly the draft is defective in that special provision has not been made for the re-arranging of the lists in regard to financial matters in light of the recommendations of the Financial Commission without having recourse to the procedure as to Constitutional Amendments.

In regard to the subject of taxation, Professor Wheare makes the following observations in his recent Treatise on Federalism:—

"There can be no final solution to the allocation of financial resources in a Fedral system. There can only be an adjustment and reallocation in the light of changing circumstances".

We then had the criticism that the Constitution is far too detailed and elaborate and contained more number of articles than any other known Constitution. This criticism does not take note of the fact that we are not starting a Constitution anew after a Revolution. The existing administrative structure which has been worked so long cannot altogether be ignored in the new framework. The second point that the critics have failed to take note of is that unlike other constitutions, the draft Constitution contains detailed provision as to the constitution and power of the Supreme Court and the High Courts and also Articles relating to the Constitution of the units themselves. If we could eliminate all those Articles, our Constitution also could be rendered simpler and shorter.

In regard to the Judiciary, the draft Constitution also recognises the importance of an independent judiciary for the proper working of democracy, and especially of a Federal Constitution. The Supreme Court, under the draft Constitution, has wider powers than any other court under any Federal system in the world.

More than any other provision in the Constitution, I should think the boldest step taken by this Assembly is in the matter of universal adult suffrage with a belief in the common man and in his power to shape the future of the country. For this institution to work properly too great a care cannot be taken in the matter of the preparation of proper electoral rolls and a uniform principle being adopted in the different parts of India. I would commend for the consideration of the House the suggestions made by my friend, the Honourable Shri Santhanam, in the course of his speech yesterday.

There are other matters which require very close and critical examination by this Assembly before the Constitution is finally adopted, such as citizenship, the formation of new States, and the position of the Indian States which have been grouped together under the able leadership and guidance of our Sardar. The position of the States which are not represented in the Constituent Assembly will also have to be considered and dealt with before the Constitution is completed as otherwise complicated legal questions might arise in regard to the relationship of these States *vis-a-vis* the Union of India.

There are two other points also which have been touched upon in the course of the debate. These relate to the emergency powers vested in the Government and to the ordinance-making power. One point that has to be remembered in this connection is that any power exercised by the President is not to be exercised on his own responsibility. The word 'President' used in the Constitution merely stands for the fabric responsible to the Legislature. Whether it is Ordinance or whether it is the use of the emergency power, the Cabinet is responsible to the popularly elected House. It should be remembered too that during the last debate it was the representatives.....

Prof. N. G. Ranga (Madras : General) : There is too much noise in the House. Another debate seems to be going on in that corner of the House.

Mr. Vice-President: Order in the House, please.

Shri Alladi Krishnamachari Ayyar: I may mention that during the last debate the repersentatives from the Provinces were more anxious, including the Ministers, than anybody else, to have emergency powers. It is they, having regard to the actual working of the administration, who wanted these emergency powers given to them. How exactly the emergency power is to be provided for, whether any changes are necessary, all that is another matter. So far as the Ordinance making power is concerned, the Ordinances will be passed normally when the Assembly is not in session. If the Assembly is in session, I do not think that the representatives elected under universal suffrage are likely to be less insistent upon their rights than the Members of this House elected on a comparatively narrow ticket.

A brief survey of the draft Constitution must convince the Members that it is based upon sound principles of democratic government and contains within itself elements necessary for growth and expansion and is in line with the most advanced democratic Constitution of the world. It is well to remember that a Constitution is after all what we make of it. The best illustration of this is found in the Constitution of the United States which was received with the least enthusiasm when it was finally adopted by the different States but has stood the test of time and is regarded as a model Constitution by the rest of the democratic world.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, Dr. Ambedkar was pleased to make a reference to the Indian States and made an appeal that so far as the units are concerned, there need not be any difference in the constitutional set-up between the Provinces and States. I am glad that such an opinion is given, I think, though for the first time. Hitherto, every State was allowed to have a Constituent Assembly of its own, and even the Unions of States were permitted to summon Constituent Assemblies for the purpose of framing their own constitutions. Many of us are wondering whether the Constituent Assemblies to be summoned in the States and Unions of States are free to make their own constitution, whether they were in consonance with the Indian Constitution or not. I want to suggest some ways by which we can attain the desired end.

In Mysore, Sir, the Constituent Assembly has done almost half of its work, and when it was about to appoint a Drafting Committee, it thought it fit that the opinions of the other Assemblies in the States and also the opinion of this honourable House may be of much value in coming to final conclusions. Therefore it has appointed a Committee of five members to get into touch with the representatives of other States' Assemblies and if possible with this House also. The personnel of the Committee has been announced. I hope the Members representing the States in this House will be able to sit separately together either officially or unofficially and evolve a policy acceptable to this House and to the country. The constituent assemblies in various States and Unions of States will no doubt take the advice that may be given to them by the States representatives in this House. But there are certain impediments in the way which I would like to point out.

The States, as you know, Sir, even under the British regime were enjoying a certain amount of autonomy more in degree than the provinces were allowed to enjoy and that autonomy, I might say, has never been misused. Every State, whatever the degree of its autonomy, has always had the interests of India at heart and acted accordingly. We, the States people, feel that the Units of the Federation may not have sufficient autonomy in the draft as it

stands to manage their own affairs well and efficiently. The draft as it stands—I beg to differ from Dr. Ambedkar—is rather too much over-Centralised. It practically makes the Indian Union a Unitary State and not a Federal State. In their anxiety to make the Centre strong, they have given too much legislative and financial powers to the Centre, and have treated the provinces and States as though they were mere districts of a province. This tendency, I am afraid, will not make for what is called the strength of the Centre. Let me tell all those who are concerned in drafting this Constitution that mere accumulation of files in the Imperial Secretariat does not make for the strength of the Centre. The strength of the Centre, if I understand correctly, consists in having a strong Army, a strong Navy and a strong Air Force and in the possession of sufficient money for these purposes, instead of it taking a begging bowl before the States and provinces. Beyond that, if they take too much power and accumulate their legislative lists, what happens is that the initiative that should come from provinces will not be there and the provinces will be reduced to mere automatons. I have read experts on constitutions and one of the accepted tests whether a country enjoys freedom is to see how far the units and the local bodies enjoy freedom and autonomy. Different people understand the strength of the Centre in different ways and the Drafting Committee have merely understood that the mere accumulation of files in the Imperial Secretariat makes for the strength of the Centre. This is a great impediment in the way of the States people agreeing to have a common constitutional set-up for the units. Before the States agree to come on a par with the provinces—I am talking here for all the units, States as well as provinces—they will have to be assured real autonomy, not autonomy to injure the interests of the State as a whole, but sufficient powers and responsibility to manage their affairs well and efficiently. We have forgotten whom we repeatedly call the Father of Nation. He said that the constitution should be a pyramid-like structure with the Centre occupying the apex. But the present set-up is absolutely topsy-turvy. The fear is there in the minds of the States people, that the Centre is taking too much power.

There is one other matter which has not been brought sufficiently to light and I hope I would not be misunderstood if I say that the States Ministry as such has caused more dissatisfaction to the States people than even the Political Department did previously. I have heard it said by the representatives of the States people in the House that the States Ministry has failed to take the opinion of the States people into consideration at all. They are more after the Princes and their Dewans. The people are really nowhere in the picture. It seems as though the Princes and the Dewans get everything and the people nothing. If the integration of States has taken place today, it is not because the Princes wanted it or their Dewans manoeuvred for it. It is because the people in the States who participated in the freedom movement had created such a position that the Princes had no other course except to follow this line, and it is a sorrowful thing that we have forgotten the people in our anxiety to placate the Princes and their Dewans. This psychology of the States Ministry has to be reversed as soon as possible in order to make the people really feel that they are one with the rest of India and they are in safe hands.

Then, Sir, the States have been enjoying in the matter of taxation much more latitude than the provinces. We have conceded three subjects and in order to meet the expenditure in connection with these three subjects, sufficient money may be provided. For example, most of the States collect income-tax just now. We have no objection if it goes to the Centre, but the other taxing heads ought to be left to the States themselves in order to meet their own expenditure. In fact the complaint is repeatedly made that the merging States today are not enjoying even as beneficent a Government as they were enjoying under the Princes. That is the opinion of the accredited

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representatives of the people. This is a very sorrowful feature. We expected that after the Princes went away and after the States were merged with the provinces they would get better amenities and better opportunities than they were accustomed to previously. It is a bitter feeling that is expressed by the States representatives. In the Orissa States and the Deccan States the administration under Congress Governments is not as beneficent as it was under the Princes' administration. I am not merely speaking as a representative of Mysore, but I have had occasion to talk with other States representatives and this is their opinion.

Then, Sir, Delhi happens to be the capital for the present. Most of us from the South, from Bengal and from other parts of the country, feel that Delhi is not suited to be the capital of India for various reasons. Historically Delhi has developed a curse; it has got all the empires it had buried in its tombs scattered all about the place, and we do not want our new Government to go that way. I have got not a sentimental reason only. Here in Delhi excepting for two months either we have to sweat or shiver and in this extremity of climates, it is almost impossible to do any hard work. The capital of a country, it is reasonable to expect, should be in the centre of the country and we can locate our capital either in the C. P. or somewhere near about.

The Honourable Shri B. G. Kher (Bombay-General): Bombay is better!

Shri K. Hanumanthaiya: Sir, I might say, after I have gathered the opinions of many of my colleagues, I am saying that C. P. is preferred. For example it may be Betul in C. P. Sir, there is an argument that having expended so much money on Delhi, is it wise for us to expend further sums of money for another capital ? In Delhi, we can still locate some of the Central offices. Now East Punjab is hunting after a capital and they want to make Ambala as its capital. We can make over half of our Government buildings here to East Punjab Government and take money from them. In the financial proposals I see that after the partition of the Punjab it has not been able to maintain itself and wants a subsidy from the Centre. If you make Delhi part of the Punjab, there will be no necessity for us to pay the subsidy, for it will then be a self-sufficient province. From this point of view and from the point of view of public opinion also it is better and in the interests of the country and its future, Delhi should cease to be the capital of India. We must be able to build a fresh capital in the Centre Provinces. Thank you very much, Sir.

Mr. Vice-President: Pandit Govind Malaviya.

Pandit Govind Malaviya: Since we are carrying on till tomorrow, may I have the privilege of speaking tomorrow?

Mr. Vice-President: I think you had better speak now.

Pandit Govind Malaviya: Sir, before I say anything else, I should like to offer my cordial congratulations to ourselves and to the Drafting Committee and its versatile Chairman, our friend, Dr. Ambedkar, for the very excellent work which they have done in giving us this Draft Constitution. It was a difficult problem which they had to face and they have tackled it most excellently. There may be many things in the Draft Constitution which one might have wished to be slightly different, but then that must be so about anything which can be produced anywhere.

The reason, Sir, why I requested you to allow me an opportunity to take a few minutes of this House was not to put before this House all the points about which I wish the draft was slightly different. In such matters, differences can remain, but after all they do not matter very much so long as a thing is tacitly good. For instance, in the Draft Constitution, there are some things which personally I should have preferred to be slightly different.

There is the election of the President, Sir, by proportional representation by single transferable vote. I do not feel happy about it; I should have preferred that it should have been by a straight vote. The proportional method might prove extremely unhealthy but I do not wish to take one moment more of your time than is absolutely necessary. I can only mention that by the way. There is, Sir, the right in the hands of the President to nominate fifteen members to the Upper Chamber; I should have felt happier without that. Then there is the federal judiciary about which we have a fixed minimum limit, but we have no maximum limit. I am sorry, Sir, I came only today. I did not know this discussion was continuing. I have not brought my papers, etc. I was not prepared to speak just now. I am just saying a few things as they strike me. There is the minimum limit but there is no maximum limit fixed to it. I can contemplate a situation where the executive, the Government of India, might abuse that provision by adding to the federal judiciary a number of new judges and getting the work done by them and in that manner bypassing any inconvenient older judiciary. I do not suggest that it will happen, but when we are framing a constitution for the future administration of the country, the more cautious we are the better. I should, therefore, have preferred that there should be an upper ceiling also to the number of judges of the federal judicature.

Sir, there are many other similar things in the constitution to which I might have referred, as I said, about which I should have felt happier if they were slightly different, but that was not the main purpose of my taking the time of this House and I shall not inflict that upon you. What I particularly wish to suggest, Sir, is about the Preamble to this Constitution. We shall be failing in our duty to our country, to the entire history of our country, to the entire culture and civilization of our country, to the entire ideology of our people if we adopt that bald preamble which we have put into the Draft Constitution.

I should very much like that we should have in it a reference to the Supreme Power which guides the destinies of the whole world. The reason why I make this suggestion is not merely that we have it in many constitutions of the world. It is not on that ground that I make that suggestion. As I said, the entire back-ground that we have in this country demands that we should do it. I will make only one submission about it as I do not wish to take up the time of the House and wish to be as brief as possible. We sit here as representatives of the people of India. Today, in this country, if we were to devise some method of finding out as to what the views of the people are in that matter, I am certain that more than ninety per cent. of our people, if not more, will be staunch believers in God Almighty. They will desire that our preamble should have such a reference. I submit, Sir, that we shall be failing in our duty as representatives of our people if we,—even if some of us, even if all of us, do not believe in God—I say 'even', I do not say that it is so— but, even if that be so, I respectfully submit that we shall be failing in our duty to our people and to our country whom we represent here, if we do not bring that into the Preamble, because, as I said, more than ninety per cent. of the people of this country believe in God and would like to have a reference to the Almighty in the Preamble. The great point about our culture has been, the great point about our philosophy has been, the great point about our social structure has been that, while we have with complete tolerance allowed unmolested place in society to every school of thought, to the atheist and the agnostic, yet, as a whole, as a people, we have always had a strong and fervent belief in the higher Power which guides us. An all pervading, an active and living belief in, and devotion to God, has been, since the very beginning of our long and glorious history, the fundamental basis, the very foundation, the supreme essence of the very life of our people.

[Pandit Govind Malaviya]

Mahatma Gandhi's life, the life of the builder of our nation today, was one beautiful, unchequered sermon to that effect. He died with the name of God on his lips. Everyday, he practised Ramdhun and I submit that the glorious impression which our country has made everywhere in the world, in the international circles and gatherings, the great impression which our great Prime Minister has made recently in the Conferences where representatives of all the countries of the Commonwealth were present, is due to the philosophical background of our country, which has in the ultimate shape taken the form of our beloved Prime Minister's present brilliant and soothing policy which we have pursued under the leadership of Mahatma Gandhi. I submit, Sir, that we will be unjust to our people and to our country if we do not do that. I hope therefore that my friend Dr. Ambedkar and others will consider that aspect and will remedy that defect or omission as I feel it to be.

The other point that I should like to mention is that in our Constitution we should have our own name for our country. I cannot understand our having a Constitution in which our country should be called 'India'. I shall not suggest any particular name; I shall be content with any name which appeals to the whole House. But, what I submit is that it will be wrong to leave India as the name of our country. We may, for some time, if necessary, put down after our own name within brackets 'India', or say, "(Known in English as India)", as the Irish have done. But, to put down India as the name of our country appears to me to be ridiculous. That is the second point which I wish to bring before this House for its consideration.

The third point, Sir, that I wish to submit is a little delicate. I hope no friend of mine will misunderstand me. In his speech, our friend Dr. Ambedkar referred to the question of minorities. He referred to the proceedings of the Irish Conferences about partition. But, he forgot that if there was a Cosgrave to say there, "To Hell with your safeguards; we do not want to be ruled by you," there was the entire English Government to back him up. We have none so here now. I am certain that no minority now will genuinely wish to have any such separate State. Therefore, I have got one submission to make. I do not say that we should not provide safeguards for minorities. By all means, we should do so; we should give them every assurance possible, not only in words, but in actual deed; but what I submit, Sir, is that the Article in the Draft Constitution about reservation of seats should have one further clause added to it—I do not want to disturb it—I do not want in any way to take away from it; by all means let the minorities have that reservation. The clause as it stands today, says that the reservation shall automatically go after ten years unless otherwise decided upon. All I want, Sir, is that if the minorities themselves or any section of the minorities themselves desire, even before the lapse of those ten years, to do away with this reservation or special representation, then, that Article of the Constitution should not be allowed to come in the way. As I said, I hope I will not be misunderstood. It is not my desire in the least degree to take away from the safeguards which have been provided; I only want that the possibility of the minorities themselves desiring and deciding to give up that reservation should not be ruled out. I hope, Sir, this will be done.

Then, Sir, I wish to submit that, at the end of our constitution, we should have a provision for a statutory revision of it after a certain period. I know that the provisions for amending the Constitution have been prepared with great thought. But, notwithstanding all that has been said, I still feel that the provision is not of a very easy nature. I should like to make it clear that I am not a believer in very easy provisions for changes or amendments to a Constitution. I firmly believe that it should be a very difficult thing to get through any amendments to a Constitution. But, for the first time at the

beginning, for once only, I should like that there should be a Statutory provision in our Constitution that after the experience of a few years, one review will take place, and as a result of that review, any changes which are suggested should be considered and dealt with by the method of simple majority. I should like to have that provision for only once. I am not dogmatic about the details of that suggestion. It may be after three years, five years or seven years. But, my purpose is that after we have experience of three or five years, once at least we should have a statutory review which should be there automatically and then after consulting the experience of people in the provinces and at the Centre, we should adopt whatever changes may be necessary. After that, I should personally like to make the provision for amendments to the Constitution as difficult and as rigid as may be possible. I am anxious, Sir, not to let your bell ring. I shall therefore stop here. These are the few suggestions which I wish to place before the House and I am grateful to you for having given me this opportunity to do so.

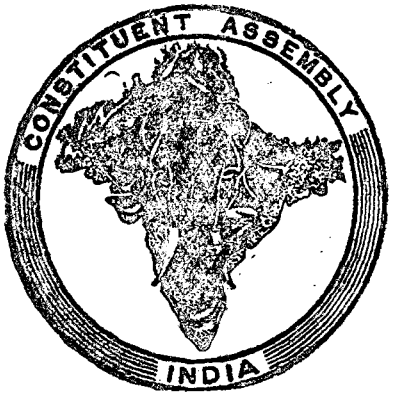
Shri R. K. Sidhwa (C. P. and Berar: General): Sir, before we adjourn, may I know the final programme regarding the motion under discussion.

Mr. Vice-President: After tomorrow nobody will have the face to say that more time is wanted.

The House stands adjourned till 10 A.M. tomorrow.

The Assembly then adjourned till Ten of the Clock, on Tuesday, the 9th November 1948.

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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the very first make an attempt to stand on her own legs and show that we are capable of developing our own institutions on the lines best suited to us. No doubt, British statesmen and all those people who are accustomed to be imperialists are looking askance at us wondering whether we will cut ourselves away from the British Empire. It is too late in the day to think of having any constitutional ties with the word 'Empire' which smacks so much of a feeling that had been engendered in the past. But one thing necessary is that we should not excite any jealousy on the part of powers like Russia or America by permanently tying ourselves to the apron strings of British Imperialism or British Commonwealth.

Now, whatever one may say, the balance of power is yet influencing world affairs; and India, strategically situated as she is in the Indian Ocean, midway between the Pacific and the Atlantic and the Mediterranean, has a special responsibility and an important role in maintaining world peace. Though we are a young nation, with very ill-equipped defences, it must be our duty to see that we estrange nobody in the world with regard to our position in international affairs. As such, if we make it plain that complete sovereign independence is our ideal and also the practical basis on which we are building up our Constitution, we may not estrange people like the Americans in the future.

In spite of all the tall talk that has been indulged in with regard to the Anglo-American Bloc, an undercurrent of jealousy still persists in America against the British Empire. But they have realised—even Republican papers in America have realised—that they must make a little sacrifice of their trade monopoly in order to strengthen India and build up a bulwark against the forces that are now sweeping the East from Russia. From that point of view I feel that we must have complete Republican and independent sovereignty in our Constitution and from that point of view, we may command some respect and also some assistance from countries which seek our help and co-operation in the near future.

With regard to other matters, we must borrow a lesson from the Australian and Canadian Constitutions where the provinces and Centre have evolved a sort of relationship which is still the bone of contention in their law courts. The recent instance in Australia where Nationalisation of Banking was attempted is an example: the Centre wanted to nationalise the banks but the provinces resisted. So also in our future development, the relationship between the provinces and the Centre has to be evolved in the best interests of the country. We require no doubt a strong Centre, but a strong Centre should not mean weak provinces. The provinces also should be equally strong to enable them to perform their multifarious duties and to develop schemes. They should be left with sufficient financial resources to discharge their duties and contribute to the strength of the Centre.

With regard to Defence, we have been unfortunately split up by the machinations of British diplomacy. Whether it is Pakistan or India, India is one and indivisible as far as the defence of the country is concerned; Pakistan, which is separated on the north-east and north-west by long stretches of the Indian Union territory, is much too small to defend herself and will have to co-ordinate her defences with India. Our frontiers lie much further than Pakistan; our eastern frontier lies much beyond Assam and if we are to integrate these, we will have to keep the States well-knit and to enter into a sort of alliance with Pakistan by enclosing it within a super-federation of this federation.

Sir, I visualise a day when it will be impossible for the new States to remain as separate entities for long. There was wisdom in the proposal that these two States could combine for certain purposes like international trade, currency and defence. I will not rule out the possibility of such a combination in the near future, in the next decade, if we are to develop our Constitution on proper lines.

[Shri M. Thirumala Rao]

One more point, Sir. We have been talking too much of a secular State. What is meant by a secular State? I understand that a secular State may not allow religion to play a very important part to the exclusion of other activities of the State. But we must make it clear that the ancient traditions and culture of this country will be fully protected and developed by the Constitution and through the Constitution.

Mr. Vice-President, I see that my time is up. With your permission I will conclude in another minute.

Wherever you go, to the Mother of Parliaments or to other British Institutions, you find invariably the Church associated with them, with their universities, with their Parliament, with their Courts of Law and so on. Although I do not want to impose our religion in our institutions to that extent, I do plead that we should protect our culture, our peculiar national characteristics and traditions. These should be protected by the Constitution. We should not forget, wherever we go, that we are not a hybrid nation or a disproportioned mixture of several cultures, but that we have a culture and a Government and a civilization of our own. This should be reflected in our Constitution.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I have sought this opportunity from you to speak during the discussion of the Draft Constitution, only because I felt impelled by a sense of duty that I should draw the attention of this august Assembly to two problems which I think are really constituting a grave danger to our newly-won freedom and to the unity and integrity of the Nation. I hope and wish that this Assembly, in order to safeguard the new and the nascent blossom of our freedom would provide adequate safeguards and provisions in the constitution for the protection of the Nation and of our hard-won liberty from two great perils. These perils, indeed, are too grave to be ignored. The perils I mean are the evils of "provincialism" and "communalism" which, in spite of the "supreme sacrifice", have yet not been laid quite low. By this "supreme sacrifice" I mean the martyrdom of the Father of our Nation. For the time being it appears that the demon of communalism has been definitely laid low, but even so I was a little painfully surprised when yesterday honourable Members like Mr. Ismail and Mr. Lari. . . . . .

Nawab Muhammad Ismail Khan (United Provinces: Muslim): On a point of information. I never spoke yesterday.

Shri Raj Bahadur: Some of the Members of this House referred to the provision of proportionate representation and separate electorates. I mean to say, Sir that, if we went to protect our freedom, we shall have to provide in our Constitution that just as we have said that there shall be no evil of "untouchability" in our body politic, so also we shall have to see that these tendencies, these idiosyncrasies which have been responsible for the vivisection of our mother-land shall not raise their ugly heads again. If I say this, it is because even to-day when we are finding that the effects of partition are still troubling our body politic, when we are not yet free from the evils of partition, there are people and forces in the country which are still trying to revive and perpetuate communal politics. It is absolutely necessary for us to see when we frame our Constitution that these evil forces do not imperil our freedom.

I may also say that there is another peril from which our country may suffer and that is "feudalism" that is still rampant in some of the States of Rajputana. Owing to the sagacity of our States' Minister, the problem of the States has been squarely dealt with, but may I still submit that the people in the various States of Rajputana are still under the thumb of these feudal landlords? The Jagirdari system is still there and the poor kisans for whom we have

been clamouring for freedom are still not breathing the air of freedom. The reactionary tendencies of these Jagirdars are still there and so I hope that, just as the problem of the States has been squarely dealt with, the problem of these feudal landlords will also be dealt with squarely and solved.

When I talk of feudalism, that naturally takes me to the problem of the States. In introduceing the Draft Constitution which has been placed before us by the Honourable the Law Minister for discussion and consideration, he (the Law Minister) spoke of a dual polity. But in this Constitution, I find that there is a "triple polity" provided therein, in as much as the States are allowed to have constitutions different from the constitution for the provinces. We see that the States are allowed to maintain their own separate armies. We see also that their Constitutions would be devised and adopted by their own separate Constituent Assemblies. They have also been allowed to have their own separate judiciary and the people of the States will not be allowed to appeal to the Supreme Court even in defence of their Fundamental Rights. These things, separate armies, separate Constituent Assemblies and separate judiciary, are things which cause great concern to us, the people who have come from the States, and I feel that it is high time that this disparity, this incongruity between the various units of the Indian Union is done away with. I would submit, Sir, that it can be safely assumed that the Princes just as they have relinquished their powers for the sake of the nation, so also would they favour the bringing of the States on a par with the provinces for the sake of the unification of the country. I feel that it will also be possible for the provision relating to Rajpramukhs to be made analogous to that of the Governors. They may have the same powers as the Governors in the different provinces, but I would support definitely my friend Mr. Vyas in his appeal that the right of being elected to the high office of governorship may be conceded to the ordinary man in the street also. I do not see any reason why the office or the high post of a Governor should be restricted only to the Princes and depend only on their choice in the case of the States.

Then I may also respectfully refer to another factor which has lately come to light in our body politic and that is about the criticism that we see being levelled these days against our Ministers in almost all the provinces. That criticism may not have any justification behind it but still the criticism is there that our Ministers are not following the Gandhian ideals in their life, that they are travelling by aeroplanes, maintaining stately houses and so on and so forth. So I feel that in the Constitution there should be a provision giving a code of conduct for our Ministers so that we may not in future find, when history gives its verdict on us, that we have failed in our duty.

Lastly, I would beg to submit, Sir, that the provision for a Council of States in the Constitution seems to me to be redundant because an upper House has always acted as a deadweight upon the progress of the people. This smacks of a slavish imitation of the West and is quite unnecessary.

I hope these suggestions of mine will be considered by the House in due course.

Prof. N. G. Ranga (Madras: General): Mr. Vice-President, I am sorry to find that the Members of the Drafting Committee have completely forgotten the very fundamental thing that was really responsible for bringing this Constituent Assembly into existence and for giving them this chance of drafting this Constitution for India. One would have thought that it would be their elementary duty to have suggested to us that this Constitution is being framed by the Constituent Assembly which has been brought into existence by the labours of the countless martyrs and freedom fighters in this country guided and led by Mahatma Gandhi, but not a word has been said in regard to this matter. Therefore I suggest that we should make it clear that this Constituent Assembly

[Prof. N. G. Ranga]

comes into existence after India has attained freedom under the inspiring leadership of Mahatma Gandhi, the Father of our Nation, and that we are grateful for the unremitting struggle of the countless men and women to regain the right of independence for our nation. This is the least that we can possibly say in appreciation of the services rendered by these martyrs in our freedom struggle, and I hope the House will make the necessary amendment later on in this Draft.

Next, Sir, I am most unhappy that Dr. Ambedkar should have said what he has said about the village panchayats. All the democratic tradition of our country has been lost on him. If he had only known the achievements of the village panchayats in Southern India over a period of a millennium, he would certainly not have said those things. If he had cared to study Indian history with as much care as he seems to have devoted to the history of other countries, he certainly would not have ventured those remarks. I wish to remind the House, Sir, of the necessity for providing as many political institutions as possible in order to enable our villagers to gain as much experience in democratic institutions as possible in order to be able to discharge their responsibilities through adult suffrage in the new democracy that we are going to establish. Without this foundation stone of village panchayats in our country, how would it be possible for our masses to play their rightful part in our democracy? Sir, do we want centralisation of administration or decentralisation? Mahatma Gandhi has pleaded over a period of thirty years for decentralisation. We as Congressmen are committed to decentralisation. Indeed all the world is to-day in favour of decentralisation. If we want on the other hand centralisation, I wish to warn this House that that would only lead to Sovietisation and totalitarianism and not democracy. Therefore, Sir, I am not in favour of the so-called slogan of a strong Centre. The Centre is bound to be strong, is bound to grow more and more strong also on the lines of modern industrial development and economic conditions. Therefore, it is superfluous, indeed dangerous to proceed with this initial effort to make the Centre specially strong. In the Objectives Resolution that we passed in the beginning we wanted provinces to have the residual powers, but within a short period of two years public opinion rather has been interpreted by those drafters to have swung to the other extreme, to complete centralisation at the Centre and strengthening the Centre over-much.

I am certainly not in favour of having so many subjects as concurrent subjects. As Mr. Santhanam has rightly put it the other day, what you consider to be a concurrent subject to-day is likely to become an entirely federal subject in another five or ten years. Therefore, although I am quite ready to leave the residual powers to the Central Government, I certainly do not want the provinces to be weakened as this Draft Constitution seeks to do.

Sir, one of the most important consequences of over-centralisation and the strengthening of the Central Government would be handing over power not to the Central Government, but to the Central Secretariat. From the chaprassi or the duffadar at the Central secretariat to the Secretary there, each one of them will consider himself to be a much more important person than the Premier of a province and the Prime Ministers of the provinces would be obliged to go about from office to office at the Centre in order to get any sort of attention at all from the Centre. We know in parliamentary life how difficult it is for ministers to have complete control over all that is being done by these various Secretaries at the Secretariat. Under these circumstances, it is highly dangerous indeed to enslave these Provincial Governments and place them at the mercy of the Central Secretariat and the Central bureaucracy.

Sir, I am certainly in favour of redistribution of our provinces, but in view of the fact that the President of the Constituent Assembly has appointed a Linguistic Commission to enquire into the possibility of establishing these provinces, I do think that any detailed discussion in this House is not in order, when the particular matter, before they make their report, is *sub-judice*; whether it is the top-most leaders of our country, the Prime Minister or the Deputy Prime Minister or any humble Member of this House—it is certainly *sub judice* for any one today to express any opinion for or against the redistribution of provinces on a linguistic basis until this Commission expresses its own opinion. Therefore, I do not wish to say anything more, although I have certainly very much to say in favour of these linguistic provinces.

What are to be our ideals? We have stated some of our ideals here in the Fundamental Rights chapter as well as in the directives. But is it not necessary that we should make it perfectly clear in one of these directives that it is the duty of the State to establish village panchayats in every village or for every group of villages in order to help our villagers to gain training in self-government and also to attain village autonomy in social, economic and political matters, so that they will become the foundation stone for the top structure of our Constitution?

Next, Sir, I do not want this distinction to be made between the provinces and the so-called Indian States. Why should it be that the Indian provinces should be degraded into a kind of District Board status while these Indian States would be given so much special power and favours? Why should these Indian States be allowed to have their own separate Constituent Assemblies and formulate their own separate constitutions? Either we should have very powerful states including the Indian States and the provinces or we should have weak provinces and weak States just as is being proposed in this Constitution. I am certainly not in favour of weak provinces or weak States; I am in favour of strong States and therefore, I suggest that my honourable friends from the Indian States also should pool their resources with us and then agree that all the provinces as well as the Indian States should be placed on the same footing and they should be made as strong as possible.

Sir, in these objectives, nothing has been said about all those people who are living in our villages. There is something here said about the industrial workers. The industrial workers, unfortunate as they are, seem to be much less unfortunate than the rural people. It is high time, Sir, that we pay some attention to this aspect also in our villages. Certainly the Bombay Resolution of the Indian National Congress of August 1942 lays special stress upon the toilers in the fields, in factories and elsewhere. But no such mention is made here; special mention is made only of industrial workers. I suggest, therefore, that whatever we want to do must be for the benefit of all those people in the villages, in the towns, in the fields, in the factories and elsewhere.

Sir, in regard to the minorities, I am certainly not in favour of the reservations so far as the great Muslim community is concerned; they certainly cannot claim any longer to be such a helpless community as to be in need of these. One of those friends have come forward to say that they do not want to have these reservations.

I am not in favour of second Chambers, in the provinces especially. These second Chambers will only retard progress. Some people seem to think that some check like this should be put in there; it will only give a special premium to conservatism and therefore we should not have it.

Then there were some friends who said that this Constitution should be turned into a sort of rigid pole. I am not in favour of rigid poles; I am in favour of a flexible Constitution. If it had been found necessary within the last two years to swing from one side to the other, leaving the residuary powers to the provinces or keeping them with the Centre, then how much more it would be necessary in the next ten years for us to try to make the necessary

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constitutional changes in our own Constitution in the light of the experience that we would be gaining. So far we have not gained any experience. Our Constitutional Adviser has gone all over the world, he has consulted other statesmen and he has come back and suggested so many amendments. We do not know how many times we are going to amend our own constitution within the next ten years after this constitution is accepted and our new legislatures come into existence. Therefore, I welcome the suggestion made by the Honourable Prime Minister yesterday that we should try to make our constitution as flexible as possible and also to make it easier within the first ten years at least to make the necessary constitutional amendments to our own constitution.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, objections of fundamental importance have been raised to the Draft Constitution as it has emerged from the Drafting Committee. I agree that there is nothing characteristic in this Constitution reflecting our ancient culture or our traditions. It is true that it is a patch work of some of the old constitutions of the west,—not even some of the modern constitutions of the west,—with a replica of the Government of India Act, 1935. It is true that they have been brought together and put into a whole. Dr. Ambedkar is not responsible for this; we alone have been responsible for this character of the Constitution. We have not thought that we must imprint upon this a new characteristic which will bring back to our memories our ancient culture. It is more our fault than the fault of Dr. Ambedkar.

It is no doubt true that Dr. Ambedkar gave an analysis of the several provisions of the Constitution, and unfortunately emphasised certain aspects of it, and gave his own views upon village republics, village autonomy and democracy. He could have spared us and spared the Assembly a controversy over these issues. Sir, left to myself, I would like very much that this Constitution must be based upon autonomous village republics. Democracy is not worth anything if once in a blue moon individuals are brought together for one common purpose, merely electing X, Y and Z to this Assembly or that Assembly and thereafter disperse. That is the present state of India today. People in the villages have had absolutely no opportunity to train themselves for democracy. They have not shared responsibility with anybody; they are absolutely irresponsible. That was the view that was taken and that was the purpose of the British who ruled us for 150 years. They destroyed the elements of our freedom, of our decentralised economy and the village republics that we had. They wanted to centralise the Government and concentrated all power in the Governor General and ultimately in the British Parliament. It was in that view that they took steps to see that the villages did not govern themselves. We must see that the village is the unit for the social fabric that we are going to build. In the village itself, I would like that the family should be the unit, though for all-India purposes, the individual must be taken as the unit for voting. The village must be reconstructed on these lines; otherwise, it will be a conglomeration of individuals, without any common purpose, occasionally meeting and dispersing, without an opportunity to come together and rehabilitate themselves both economically and politically.

But, as we are situated today, is it at all possible immediately to base our Constitution on village republics? I agree this ought to be our objective. But where are these republics? They have to be brought into existence. As it is, we cannot have a better Constitution than the one that has been placed before us on the model of some Western Constitutions. Therefore, I would advise that in the directives, a clause must be added, which would insist upon the various Governments that may come into existence in future to establish village panchayats, give them political autonomy and also economic independence in their own way to manage their own affairs. Later on, a time will come when on the basis of these republics or autonomous panchayats a future Constitution

may be built. I agree with our Leader, the Prime Minister, who spoke yesterday that this Constitution may be kept in a transitional form for a period of five years, so that in the light of whatever experience we may gather in this period, a future Assembly which may be elected on the basis of adult suffrage may re-draft our Constitution or amend or alter it. With that safeguard, I would urge upon this Assembly to accept the Constitution as it has been placed before us by the Drafting Committee and finalise it.

There is another criticism that has been levelled,—and according to me, it is a more serious one,—against this Constitution. To the man in the street, political democracy is worth nothing unless it is followed by economic democracy. In the Fundamental Rights, the right to speak, the right to address Assemblies, the right to write as one likes, all these have been guaranteed; but the right to live has not been guaranteed. Food and clothing are essentials of human existence. Where is a single word in the Constitution that a man shall be fed and clothed by the State? The State must provide the means of livelihood for every one. Russia has addressed itself to this problem and has concerned itself with the growing of food and the feeding of every citizen of the country by nationalising the means of production. In England, the Government cannot be in the saddle even for a single day if it allows even a single citizen to die of starvation. We have not yet taken any lesson from the 35 lakhs of people who died three or four years ago during the Bengal famine. Are we to perpetuate this tragedy? Is there a single word in the Constitution that imposes on the future Governments the obligation to see that nobody in India dies of starvation? What is the good of saying that every man shall have education, every man shall have political rights, and so on and so forth, unless he has the wherewithal to live? In England, either the Government must provide every citizen with employment or give him doles so that nobody will die of starvation. It is very disappointing to see that we have not introduced a similar provision in this Constitution. I would urge upon this Assembly that even now it is not too late, and that that must be our first concern; the other things may stand over if necessary.

There is another important matter to be considered and provided for. Otherwise India may be engulfed in a war or internal unrest. Now war clouds are thickening. There are two ideologies fighting for power, fighting for the supremacy of the world. On one side, there is the political democracy of the West; but there is the economic dictatorship of America. We do not want economic dictatorship at all; but we do want democracy. In Russia, there is no political democracy; but there is economic democracy. The two powers are striving for the mastery of the world; on account of this a war may come at any time. Is there anything here in this Constitution to say that we stand for economic democracy along with political democracy? There is a vague reference in the Objectives Resolution that there shall be social justice and economic justice. Economic justice may mean anything or may not mean anything. I would urge, here and now, that steps should be taken to make it impossible for any future Government to give away the means of production to private agencies. We have seen what private agencies mean. So far as cloth is concerned, within a short time of the removal of controls, prices went up. Why should we not take charge of all the mills and produce the necessary cloth? Even in the matter of food, in spite of all the exertions of this Government as well as the previous Government, are we able to grow sufficient quantity of food and distribute it in the country? I would therefore say, the time has come in this country when we must make a departure. We should not follow the economic dictatorship of the West or the political dictatorship of Russia. In between, we must have both political democracy as well as economic democracy. If we have to stand out as the protectors of Asia, or chalk out a new

[Shri M. Ananthasayanam Ayyangar]

line and avoid all wars in the future, this alone can save us. Let us not be complacent. Communism is spreading. In the north there is communism; it has come to our very shores. China has been practically swallowed up by the communists. And likewise Indo-china. Burma is also in the grip of the communists. I do not know to whom I could attribute the sabotage of telephonic communications in Calcutta. I understand that there is a movement there to destroy the water works and destroy the power house also. There is a rumour afloat that in Delhi itself, there is going to be a strike in the Water-works Department as also in the Electricity department. Unless we make up our minds to have economic democracy in this country and provide for it in the Constitution, we may not be able to prevent the on-rush of communism in our land.

The next important matter for which provision should be made is the effective consolidation of our country as early as possible. I was really surprised to hear the words of my friend Mr. Hanumanthaiya yesterday. The people in the States were anxious to fall in line with the rest of India. They wanted to get rid of the Rulers; we helped them; when once they regained freedom, they want to supersede these Rulers and become the rulers in their own States. Big States and small want to be separated from the rest of India. Why should not they adopt this Constitution which is framed for the provinces also?

Shri K. Hanumanthaiya (Mysore): On a point of personal explanation, Sir, I never claimed any separate status or independence for any of the States.

Shri M. Ananthasayanam Ayyangar: There is a view that so far as the States are concerned, if they merge in India they will lose the peculiar privilege of having Prime Ministers in their small places. That is a disadvantage they have, I agree, but it is better to fall in line with the rest of India. Why should they not adopt the position in the rest of India and why should they reserve all the subjects for themselves and give only three or four subjects?

(At this stage Mr. Vice-President rang the bell.)

In the case of a Bill there is no question of time. Strangely enough you have imposed a time restriction.

Mr. Vice-President: You must set an example to others.

Shri M. Ananthasayanam Ayyangar: I will accept what you say; there will be ample opportunities and I shall clear up this matter later.

Shri Rohini Kumar Chaudhari: (Assam: General): Sir, I am deeply grateful to you for having given me this opportunity of participating in this debate of momentous importance but before I proceed, I should like to pay my share of tribute to the Members of the Drafting Committee, its worthy President and above all, our Constitutional Adviser whose services to our poor Province, Assam, in the heyday of his youth are still remembered with affection and gratitude.

Nevertheless, I must say that this Draft does not claim perfection and there are faults of omission and commission to which I must refer in the course of my speech. The first and foremost question which strikes me that this House should consider is whether they want to retain the State of Assam in the first schedule of this Constitution Act. The position has become somewhat difficult now, and you must once for all decide and provide in this Constitution measures which would enable Assam to be retained in India. I refer to the lamentable neglect to make any provision for finances so far as my province is concerned. It has been stated in the report that for five years the *status quo* must continue, which means that Assam at the end of five years will cease to exist as any province of importance. Sir, I must just go into a little detail. At

the present moment there is a deficit of one crore rupees in that province and the total revenue of the province including what is obtained from the Government of India is to the tune of four crores only and already the expenditure has gone up to five crores. If you have to maintain the minimum standard of administration of an Indian province, at least an expenditure of eight crores is necessary. From where is this amount to come? We have said and urged even in the olden days that we must get a share of the petrol and kerosene excise duty, and a share of the export duty on tea; but nothing has been so far done even though the conditions are so desperate. The Drafting Committee does not make any exception in the case of the special condition of that province. Sir, we have gone to the maximum capacity of taxation. Our rate of taxation is far more excessive than any other province and we tax ourselves at the rate of 4·3 whereas the rest of the provinces tax themselves at the rate of 4·9. We had started levying tax on agricultural income long before the rest of the provinces and we had taxed ourselves for amusement and luxuries long before others and even now our conditions are so desperate as this, and I would appeal to this House that if you really want to retain Assam in India, you must make some special financial provision for her and you must pay some special attention, otherwise that province will become bankrupt. India is one body politic and if one finger of that India is rotten, the whole India will rot in the long run. If you allow Assam to be ruined now, you will see that you will have to suffer ultimately for that.

I would like to refer to another point, and that is with regard to **Article 149.** Curiously enough, I find an amendment has been suggested which if given effect to will lay down a very dangerous principle, the principle of converting a general population into an absolute minority. I refer to the amendment which had been suggested by the Drafting Committee and which says:

> "That in clause (3) of article 149, after the words 'save in the case of the autonomous districts of Assam' the words 'and in case of constituencies having seats reserved for the purposes of article 294 of this Constitution' be substituted."

If this is given effect to, it will mean that all communities with reserved seats will have constituency of less than 1 lakh population whereas the general population must be restricted to constituencies having only 1 lakh population. This will mean additional weightage being given to reserved seats which is not claimed or asked for by any of the communities. The proportion of the population in the province is as follows:

Hill tribes	...	18 per cent.
Muslim	...	17 per cent.
Scheduled castes	...	4 per cent.
General		34 per cent.

Where have you seen in a province where the general population is 34 per cent out of a total of 74 per cent that special weightages have to be given to communities ranging between 18 and 17 per cent of the total population? And yet if this is accepted it will mean that the general population will have to give up some of their seats and will get less than what they are entitled to on the basis of population. This is a dangerous principle, and though it refers only to one province it will create a situation in which the general population will be converted into a minority and weightage given to other people for whom seats have been reserved. Of course the proposition which I make will not affect the tribal population at all because they will have their autonomous districts. I certainly see that there are complications in the case of reserved seats if you

[Shri Rohini Kumar Chaudhari]

adopt the formula of one lakh representation; but the best thing to be done in this matter would be to make an exception in the case of Assam in regard to having a constituency for a lakh of people.

I will refer to one other act of omission. In the Draft Constitution there is no mention of women. I think the peculiar composition of the Drafting Committee which consisted of people who have no domestic relations with women made them nervous about touching on that point. In this House there has been no mention of a special constituency for women. I know there are Members here who have unbounded faith in the chivalry of men and who consider that they will be quite competent to get seats even though no special constituency is reserved for them. But outside this House that is not the feeling. Women generally have lost faith in the chivalry of men. The young men of to-day do not show respect to them even in the trams and buses.

Mr. Vice-President : The Honourable Member has reached his time limit.

Shri M. Ananthasayanam Ayyangar: Sir, on a point of order, I do not find in the rules any provision for a time-limit in respect of Bills of this kind.

Mr. Vice-President: That was done with the consent of the House. First it was 10 minutes, then it was extended to 15 minutes, and then to 20, and again it was brought down to 10 minutes.

Shri Rohini Kumar Chaudhari: Sir, from my experience as a parliamentarian and a man of the world I think it would be wise to provide for a women's constituency. When a woman asks for something, as we know, it is easy to get it and give it to her; but when she does not ask for anything in particular it becomes very difficult to find out what she wants. If you give them a special constituency they can have their scramble and fight there among themselves without coming into the general constituency. Otherwise we may at times feel weak and yield in their favour and give them seats which they are not entitled to.

Shrimati Renuka Ray (West Bengal: General): Sir, the main features of the Draft Constitution embody the principles of a democratic federation and as such should win the approbation of all. At the same time there are certain matters which I feel are not quite explicit or in which changes are required, if this constitution is to conform to those ideals which actuated India during its many years of struggle and which are embodied in the Objectives Resolution to which our Prime Minister referred yesterday. Sir, I agree with my Honourable friend Dr. Ambedkar that it is the spirit in which the Constitution is worked that really counts. I feel that, whatever the paper Constitution may be, it is the spirit in which we are able to work it, that will make all the difference. Again, whatever constitution we may draw up to-day, it will not be possible for us to foretell how it will fit in with our requirements in its actual working and with the inherent genius of our race. It is therefore quite essential, as the Prime Minister said yesterday, that the Constitution at present should be flexible. I think amendments of the Constitution should be by simple majority for the next ten years so that there may be opportunities for adaptations and modifications in the light of experience.

Turning to the citizenship clause, I think there should be a categorical statement in it about a single uniform citizenship with equal rights and privileges. As rights involve responsibilities, so it is necessary that the obligations of citizenship should also be enumerated in this Clause.

With regard to Fundamental Rights, equal rights have been prescribed. Quite rightly, it has been laid down that the State shall not discriminate against any citizen on grounds of religion, race or sex. But in view of conditions in this country and in view of some of the opinions expressed by the

public—and the last speaker's chivalry touched us deeply—I think it is necessary to have an explicit proviso that social laws of marriage and inheritance of the different communities shall not also have any disabilities attached to them on grounds of caste or sex. It is of course true that the right of equality includes this but there may be different interpretations and much confusion and I therefore appeal to the House to have a proviso to explain this.

I will not repeat what my Honourable friend Shri Ananthasayanam Ayyangar said but I do feel that in regard to the economic rights of the common man there is a lacuna. Although I agree that the provision "that no person shall be deprived of his property save by the authority of the law" is alright, I do not at the same time see why under justiciable rights one should have the second part of this clause which goes into details about compensations when property is taken by the State for public purposes in accordance with law. Surely if there is any need for putting this into the Constitution it should be under directives and not under rights which are justiciable and enforceable in courts of law. It is not right that we should commit the future to the economic structure of the present.

Turning to education, which I consider to be one of the most fundamental of rights, I feel there is a great inadequacy. I do not want to repeat what other speakers have said, but I would appeal to the House to include a proviso whereby a definite proportion of the budget is allotted for this purpose. This is nothing very new; it is already there in the Constitution of China which says:

"Educational appropriations shall set apart not less than 15 per cent of the total amount of the budget of the Central Government and not less than 30 per cent of the total amount of the provincial, district and municipal budgets respectively." If we are to progress and prosper I suggest that in the matter of the two nation-building services of education and public health there should be some provision in the Constitution of the type that is there in the Chinese Constitution.

With regard to the reservation of seats for minorities we have not of course in a secular State provided for separate electorates, but I do not see why we should have reservation of seats for minorities. It is psychologically wrong to lay down, as it has been laid down, that after ten years the right shall lapse unless extended by amendment. I am sure that if this privilege is conceded now there will be a clamour for its extension. It is not fair to these minorities; it is not self-respecting for them. If the House wants to ensure representation for minorities I would suggest multiple consituencies which cumulative voting. Some speakers have suggested proportional representation by single transferable vote. I think that is a difficult procedure particularly for India and I would not recommend it. But I think that multiple constituencies with cumulative voting has a great deal to recommend it. In the first place, it will give much better representation not only to these minorities but to others; and it will also be a method of ensuring representation to the minorities without creating a separatist tendency. The last speaker Sri Rohini Chaudhuri the erstwhile champion and defender of women who is against removing their social disabilities spoke about special electorates for women. All along the women of India have been against reservation of seats or special electorates. Before the 1935 Act came in we were against it and put forward our views in no uncertain terms, but it was forced upon us; and to-day, in spite of the chivalry of the previous speaker, Indian women will not tolerate any such reservations in the Constitution. I will not repeat what others have said about village panchayats. I feel that freed from the shackles of ignorance and superstition, the panchayat

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of the Gandhian village will certainly be the backbone of the structure of this country's Constitution. I do not think there is anything in the Constitution that can bar it.

Coming to the allocation of powers between the units and the Centre, I think we must approach this subject dispassionately. There is a great deal to be said for giving as much provincial autonomy as possible. At the same time, where a country has a tremendous leeway to make up, particularly in the nation-building services, the unifying force must be strong and the Centre should be given some power of a supervisory and co-ordinating character, in regard to both Education and Health. I do not think the provinces should be crippled by taking away from them certain financial securities. They should at least be given 60 per cent of the income-tax according to the recommendations of the expert committee, 35 per cent on the basis of collection, 20 per cent on the basis of population and 5 per cent for hard cases. This is a very good recommendation and I hope this House will agree to embody it in the Constitution. I also feel that a Financial Commission should be set up immediately and not after five years.

Before I conclude, I wish to say something about linguistic provinces. Unity must be our watchward to-day and it is a fatal mistake to allow realignment of provincial boundaries on a linguistic basis at this juncture of our country's history. It has already led to much bitterness and strife and will lead to more. There is no justice or logic if such a thing is allowed in one part of the country and not in others. For instance if you allow a province of Maharashtra to be formed, naturally there will be other parts which will want it. There is in Bengal a feeling of great bitterness that she who has sacrificed part of her territories so that the transfer of power could take place should be denied her rights, now. It was because of the political expediency of the British and to suit the purposes of an alien Government that Bengal was forcibly deprived of much of its territory when the movement for the freedom of India started here. I do not subscribe to the theory that we should have a reallocation on a linguistic basis at this time. If it is to be done at all it should be done after ten years when passions have subsided. In any case, for administrative purposes there is no need for a linguistic realignment. Linguistic minorities in every province should have a guarantee that they will be given education in their mother tongue. I would urge that the Linguistic Boundary Commission should stop work or in any case it should be put off for ten years. I repeat that the overriding consideration is that of unity, if we want that India should be strong and prosperous and should take its rightful place in the comity of nations.

The Honourable Shri Ghanshyam Singh Gupta (C.P. and Berar: General): Sir, it has been said that the language of the Union should be simple Hindustani, that the language of the Constitution, the language on which we shall frame our laws, should be Hindustani. I was in search of this simple Hindustani. I could not find it in C.P. I could not find it in the law books. I could not find it even in the official proceedings of this August House. The official proceedings of this House are published in three languages: English Hindi and Urdu. I read English, I read Hindi and I got read Urdu with the idea that I might be able to find what they call simple Hindustani. I could not find it. Urdu was Urdu and Hindi was Hindi. There was no such thing as simple Hindustani. I thought that I might find it in the newspapers. 'The Tej', Limited, the Jubilee of which was celebrated the other day, publishes news in two languages, one in Hindi called 'the Vijay' and the other in Urdu, called 'the Tej'. I compared the languages of these two also. I could not find simple Hindustani. I would not waste the time of the Honourable House by

reading from these publications. I have got a copy of 'Vijay' in my hand. It is all Hindi in 'Vijay' and all Urdu in 'Tej'. I found two books, elementary text in Delhi may have simple Hindustani. I found two books, elementary text-books in Geometry (rekhaganit). I could not find simple Hindustani in them also. I also looked at the Elementary Arithmetic books and also Elementary Geography. I could not find there what they call simple Hindustani. They were all either Urdu or Hindi. I shall give you a few illustrations. Now, Sir, in elementary arithmetic multiplication we call गुणन (gunan) in Hindi. It is called ज़रब (zarab) in Urdu. Multiplicand is गुण्य (gunya) in Hindi, while it is मज़रब (mazarab) in Urdu. Multiplier is गुणक (gunak) in Hindi and it is मज़रबफी (mazarbafi) in Urdu. Product is गुणनफल (gunanfal) in Hindi, while it is हासिल-इ-जरब (hasil-i-zarab) in Urdu. Divisor is भाजक (bhajak) in Hindi. It is मकसूम इलाह (maksum-i-lah) in Urdu. Dividend is भाज्य (bhajya) in Hindi. It is मकसूम (maksum) in Urdu. Quotient is भजनफल (bhajanphal). It is खरफि-इ-किस्मत (kharf-i- kismat) in Urdu. L. C. M. is लघुत्तम समापवर्त्य (laghuttam samapvartya) in Hindi. It is जुआजाफ-इ-अकल (zuazaf -i-aqual) in Urdu.

I can multiply illustrations. I now take up elementary geometry. Radius is तृज्या (trijya) in Hindi. It is निस्फकुतुर (nisfakutur) in Urdu. Isosceles triangle is समद्विबाहु तृभुज (samadvibahu tribhuj) in Hindi. It is मुसल्लस मुसावि-उल-साकिन (musallas-musvai-ul-sakin) in Urdu. Equilateral triangle is समत्रिबाहु तृभुज (samatribahu tribhuj) in Hindi. It is मुसल्लस मुसाब-उल-जिला (musallas-musavi-ul-zila) in Urdu Right-angled Isosceles triangle is समकोण समद्विबाहु तृभुज (samakon samadvibahu tribhuj) in Hindi. while it is मुसल्लस मुसाविउस्साकैन कायम-मुज्ज़ाविया (musallas musavius-saquan quamuzzavia) in Urdu.

I can quote hundreds of such illustrations. I could not find simple Hindustani even in these elementary text-books. I felt somewhat puzzled when ladies and gentlemen loudly proclaim that they can have simple Hindustani for our laws. It is only in the bazaar that I could find simple Hindustani. When we cannot have simple Hindustani even in the elementary school-books, how can our laws be made in it? I have done, Sir.

Shri Mahavir Tyagi (United Provinces: General): I thank you very much, Sir, I have been waiting for the last three days to speak on this Draft Constitution. I am glad you have permitted me to speak for a few minutes.

I must start by thanking and congratulating the Drafting Committee for the high level of legal language and phraseology which they have used in the Draft from beginning to end. I do not want to criticise the Drafting Committee. They have done their work very efficiently. They have collected together bits of the principles of Constitution that we lay before them in irregular instalments, and have given us a complete picture for our review.

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Sir, when we sat for the first time to draw a picture of the Constitution of India, we had a blank canvas aface and many of us did not actually know which side to start from and what colour to fill. It is all due to the ability of these talented lawyers that we have now got a complete picture to look at. When you wish to judge an artist's work, you should take the opinion of a layman. If it appeals to the layman, it must be good. That is my criterion. The lawyers have finished their work and the complete picture is before us. I, as a layman, want to put before you my ideas about it. The circumstances have changed from what they were when this work was entrusted to the Drafting Committee. It is very unfortunate that, in the history of India, the lamp which lit our hearts with pleasures of freedom was put out suddenly and we were steeped in sorrow. Then again, populations have changed and the whole face of the country has changed. The ideology also has changed to a great extent. Now to give that old picture on the canvas will be making the picture a back number. We must keep in mind today the present environments, the present conditions and the growing ideologies. So, Sir, we must examine the picture in the light which gave us freedom. In fact, we must examine it from the point of view of Gandhiji, through his eyes. His eyes are not with us, but still there are persons in this House who have the glimpse of his eyes. We can all recollect what Gandhiji thought about Swaraj. It must not be forgotten that this Constituent Assembly is the fruit of the labour of those who worked day and night for about thirty years in their attempt to win freedom. It is their achievement. It is they who should have given us the Constitution. They alone are competent to draw up the Constitution. The Constitution should have been the work of revolutionaries alone. But since this Assembly has been constituted by the British, we cannot think of the other possibilities and it could not be purely a Gandhian Constitution altogether. I admit this. But again, we are in the majority and we should see to it that the Gandhian outlook does not vanish from the country so soon after his death.

In this Constitution, I must confess, I am very much disappointed. I see nothing Gandhian in this Constitution. It is not the fault of the Drafting Committee. It is our own fault. When we decided upon the principles of this Constitution we gave them certain basic principles to work upon. But conditions have since changed. When we decided about the representation of communities, language and other controversial matters we had to reckon with the reaction our decisions would have in Pakistan. Now the situation has totally changed. Pakistan has been freed of its minority problems altogether; there those problems have vanished. Here also the thorny and the horny ones have migrated away from India; those who fought us under one pretence or the other have forsaken their mother-country and have gone over to the other side, and have adopted a step-mother. We have with us now only those Muslims, Sikhs and others who want a united India. India is united today and therefore the Constitution must be suitable to the present set-up of things.

So, Sir, from the Gandhian point of view when I look at this picture, I find one thing very prominently lacking. Gandhiji had always been keen on total prohibition in the country, but the Constitution does not say a word about it. Our promises to the electorate on this issue have been fulfilled only in Madras and in some other provinces. Gandhiji was anxious that in India as a whole there should be complete prohibition. I would suggest that this idea of Gandhiji should be taken in before we sign this Constitution.

Then, Sir, Gandhiji was very keen on cottage industries to be organised on the basis of self sufficiency. This item had a top priority in his 'constructive programme'. Here this is also lacking. I am an orthodox Gandhite and surely I am not a socialist and so I do not want to wipe away all the big industries. In the context of things to-day, the various industries in the country are very helpful, but if and when they are to be abolished, they should be abolished *en masse*. You cannot bring in socialism by stages, by socialising one industry after another. When socialism comes, it should cover everything, all at a time. If total socialism comes all of a sudden, there will be no loss to anybody, because the loss sustained by anybody on one count will be made up on the other count, because all property becomes absolutely a socialised property. To say in the Draft Constitution that people shall not be deprived of their property without adequate compensation means that India will ever belong to the vested interests. To-day there is not even a blade of grass which does not belong to somebody or the other. There is not even one particle of sand which does not belong to somebody or the other. According to this Constitution, if the future generations want to socialise all property and all means of production, then every particle of sand and every blade of grass will have to be compensated for. I want to know, wherewith will they compensate this total wealth: it would all be in the hands of individuals who will demand compensation. So, compensation wil be impossible. Gandhiji had said that the wealthy should consider themselves only as custodians of wealth. He never went to the extent to which we are going in this Draft Constitution. I therefore tell you, Sir, that before we sign this Constitution, we should see that we do not sow seeds of a bloody revolution in India. Only if revolution is meant to be avoided we should let the door remain open for coming generations, if they ever so desire, to socialise all vested interests and all means of production in the country. If we shut the door as we have done against future socialisation, by our Article 24(2), I submit, the youth of India will rise and knock at the door and smash it and the result would be a bloody revolution. (cheers). Therefore, Sir, I would plead that we should scrap this sub-clause altogether and make it possible in future for the Parliament to socialise all property and all means of production without being compensated for. It is also a sort of mistake, Sir, to say that we are a sovereign body. I do not think we are a sovereign body in the sense in which a Constituent Assembly should be. The sovereignty that we enjoy is the sovereignty that the British enjoyed in India: It is a transferred sovereignty. Real sovereignty will belong only to the Parliament which comes after the introduction of adult franchise. That Parliament must therefore be more morally and constitutionally competent than us to decide issues of this nature.

I then come to the question of minorities. I am sorry that Dr. Ambedkar made the statement that minorities are an explosive force which if it erupts can blow up the whole fabric of the State. I say that these minorities can do nothing of the sort. The reason is simple—they are not factual, they are a mere fiction having no existence. I throw them a challenge. They have no right to be separately represented here. Whom will they represent? The fiction of minorities was a British creation. The Scheduled Castes are not a minority at all, simply because a few castes of the poorer classes have been enumerated together in a schedule, they have become a "scheduled minority". This minority is a mere paper minority. It is being perpetuated now because some of the opportunist families among them want to reserve their seats in the legislatures. Those people who took pleasure in calling themselves a minority have migrated away from here. It is only those who believe in one State that remain. Therefore, Sir, there is no minority now and there should not be any provision for minority representation here, because this has proved ruinous to the so called minorities themselves. Take the Muslims. I had

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seen in Dehra Dun personally, and I know what their reactions are. They are an absolutely demoralised people to-day. Even the ordinary rights of citizenship they are not morally free to enjoy. They are so cowardly to-day that they cannot stand erect in India because of the wrong lead they had followed in the past. Therefore, Sir, I would ask the Scheduled Castes, the Sikhs, the Muslims and the other minorities and for the matter of that even Hindus not to ask for any kind of reservations for them. We are a secular State. We cannot give any recognition or weightage to any religious group of individuals. I could understand their claims as majority or minority if they had belonged to different races. Beliefs or creeds are a purely individual affair. I also refute Dr. Ambedkar's claim that the majority in India is "basically a communal majority". The majority party is Congress, which is purely political.

Then, Sir, a word about the villages. Dr. Ambedkar said that he was happy that the "Drafting Committee has not accommodated the village". He characterised it as "a sink of localism and a den of communalism". It is these sinks of slavery that were facing all sorts of repression in the freedom struggle. When these sinks of slavery that were being charred, burnt and tortured in Chimoor, the pyramids of freedom were applying grease on the back of the Britishers. Unless I raise my voice against the remarks which Dr. Ambedkar has made against villages, I cannot face my village people. Dr. Ambedkar does not know what amount of sacrifice the villagers have undergone in the struggle for freedom. I submit, Sir, that villagers should be given their due share in the governance of the country. If they are not given their due share, I submit that they are bound to react to this. I thank you, Sir.

B. Pocker Sahib Bahadur (Madras: Muslim): Sir, I am very thankful to you for giving me this opportunity to speak a few words on this motion. In the first place, I would just like to refer to the question of language. When I first entered this august body, I felt myself to be under a very great disability that I was not able to follow the proceedings that were going on. Then I found that a very considerable section of this House was in the same unfortunate position as myself and the idea struck me that the Constituent Assembly, which is going to determine the destinies of millions of this country for ever, is conducting the proceedings in a manner which does not bring credit either to this Assembly or to the nation. We have been going on speaking about very important and vital subjects without every one of us understanding each other. That is really a very unfortunate position. I raised my cry against it, but I must say that I did not succeed. Even now the disability continues, even though to a lesser extent and I am glad that, at any rate, there was some abatement in the matter of the extent to which that disability is suffered by us.

Now, Sir, in the Draft Constitution, provision is made that the official language shall be Hindi and English. I submit, Sir, that this also will create an anomaly. No doubt provision is made that arrangements may be made for giving the substance of all the speeches of one language in the other language, but to what extent and what is the method to be employed for that, it is yet to be provided for. I submit, Sir, that it is very necessary that for some reasonable period, it may be ten years, it may be fifteen years,—that is a matter of detail—there should be a provision that the official language should continue to be English. We have no reason to hate the English language. As a matter of fact we ought to be grateful to the culture that we have imbibed from that language. In fact for a great deal of our agitation for freedom and the freedom that we have obtained large contribution has been made by

the English language and by the culture which we imbibed from that language. Therefore, I do not think that there is anything which we should hate in that language; and particularly, when we have attained our freedom, we are entitled to adopt the best from any nation from any part of the earth. I shall also say that there is no proprietorship in language. The English language cannot be claimed by the Englishman as their own with any exclusive right for themselves nor can we claim Hindi as the exclusive language for ourselves. There are several languages in the world and therefore we are entitled to use every language. So we are entitled to use the English language and we must adopt it until we are in a position to have one national language known to the generality of the public of this country. Until that position is attained, we must continue English as the official language so that every one who assembles in the Parliament may understand each other. Of course, there may be some stray cases in which the representatives may not be acquainted with English, but a very large majority of them will be acquainted with English and therefore, I submit, Sir, that the English language must continue to be the official language at least for fifteen years, by which time the nation may be prepared to have a national language for themselves.

Now, Sir, coming to the question as to what that national language should be, that is a matter to be decided by this august body. I must say at the very outset that I am not acquainted either with Hindi language or with Urdu language or with Hindustani. Therefore, I am taking a dispassionate view of the matter. It is very difficult to say that it is possible for the people of this country to learn Hindi overnight. No doubt we must have a national language, but we must prepare the nation for it by making provision for their learning that language. Now if Hindi is to be made compulsorily the official language, the question will arise in the elections by adult franchise that knowledge of Hindi should be the primary qualification of a candidate for election. I think it will be detrimental to the interests of the country, if that happens, and the knowledge of Hindi becomes the criterion in electing their representatives.

I do not want to dwell more on the subject as the time at my disposal is very short. I would only submit this. My suggestion is that this august body should decide in favour of Hindustani for no other reason than the fact that it is the solemn testament of Mahatma Gandhi, the father of the nation. He was one who was well acquainted with this controversy about these languages and he knew what the nation was and it is after mature consideration that great man has suggested that Hindustani with the Nagari script and the Persian script should be the official language and I hope that this august body will really revere the memory of that great man by deciding on Hindustani with Devanagari and Urdu script as the official language.

Now, Sir, if we do not abide by his advice, the world might say that after all the devotion and reverence we show to Mahatmaji is a lip-reverence and a lip-respect and it is not deeper than that. Let us not give occasion to the world to say that our reverence for Gandhiji is only lip-respect. Let us not allow ourselves to be accused of the grave charge that soon after the death of Mahatmaji his views and wishes were buried nine fathoms deep. At least for the sake of his memory, I appeal to you, Sir, and to all the Members of this body to vote upon Hindustani as the official language.

Now, Sir, I would just like to deal with another question, and that question is about the freedom of person. Recently we have heard so much about the power of promulgating Ordinances that is being exercised by the various Governments. Particularly I am fully aware of the circumstances under which the Ordinance rule was enforced in the Madras Presidency. The legislature was in session. All on a sudden, it is prorogued one evening and the next morning there comes this bomb of an Ordinance, even taking away the powers of the

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High Court to issue writ of *Habeas Corpus* under section 491 of the Criminal Procedure Code. I refer to this fact in order to show that if the power of making an Ordinance is preserved, there is every likelihood of the power being abused and the liberty of the subject being dealt with in a very reckless way. In pursuance of these Ordinances, hundreds and thousands of innocent people were arrested and kept in custody as if they were chattel, without their even being told what the charge against them was and why they were detained, even as required by the very Public Safety Act. In this connection, I would only request this House to see that the powers of the High Court are not in any way taken away with reference to saving the liberty of the subject. Neither the legislature nor the Government should be allowed to pass any law or Ordinance which takes away the power of the High Court to protect the liberty of the subject. That is a very fundamental point. We were crying hoarse when the Britishers were ruling that they were keeping in custody persons without bringing them to trial. I say this is a sacred right and it must be provided in the Fundamental Rights that no man, to whatever religion, or to whatever political creed he may belong, shall be arrested or detained except after trial by a court of law. This is a sacred right of which a citizen should not be deprived. It is said emergencies may arise; even when emergencies arise, there must be power in the High Court to see that the man is brought to trial and he must be kept in detention only after proper trial. No power should be given either to make any laws or to make any Ordinance to enable the Legislature or the Government to deprive the citizens of their personal liberty without his being brought to trial before a court of law. I would therefore request this Assembly to see that provision is made in the Fundamental Rights that the liberty of every subject is protected and no man should be incarcerated without being brought to trial before a court of law.

One word more, Sir, and that is about the salary of the High Court Judges. This morning when the memorandum submitted by the Chief Justice of the Federal Court and of the Chief Justices of the various High Courts was circulated to us, I realised on going through that memorandum that they have made out a very good case for maintaining the present salaries. The salaries were fixed about 70 years ago. After that, everything has gone only in favour of retaining it and all circumstances are against reducing the salaries. The purchasing power of the Rupee has gone down; income-tax has been increased; modern life has become more costly. In order to maintain their dignity and to keep the Judges beyond temptation, it is very necessary that the present salary of the High Court Judges should be maintained, without being reduced.

Just one minute more, Sir. I shall just mention the point. I have maintained that the only way of protecting the rights of the minorities is by giving separate electorates. I do not want to develop the point further. I know the matter has been discussed in this House before and the House was against it. I know the House will be against it even now. I am giving my honest feeling that it is the only right way of protecting the rights of minorities and I would appeal to the House to consider the question dispassionately. If for any reason that is not practicable, and if the House thinks that it cannot agree to that, reservation is absolutely necessary. I do not want to go into the reasons. In any case reservation of seats has to be retained. Election by proportional representation by the single transferable vote, or the creation of multiple constituencies with cumulative voting, may be some of the other remedies. I would only say that separate electorates is the proper remedy and the right method of giving protection to the minorities. In any case, if that is not practicable, reservation must be there, or in any case, the other

methods may be tried. Election by proportional representation by single transferable vote will be a rather complicated method; otherwise, I would have preferred that.

I thank you, Sir.

Shri L. Krishnaswami Bharathi: '(Madras: General): Mr. Vice-President, Sir, coming almost at the fag end of the discussions, I do not think I have anything novel or new to traverse. However, I felt I should discharge my duty by giving certain views of mine.

Dr. Ambedkar deserves the congratulations of this House for the learned and brilliant exposition of the Draft Constitution. No congratulations are due to him for the provisions in the Draft for the simple reason they are not his. Honourable Members may remember that most of the clauses in the Draft Constitution were discussed, debated and decided upon in this House. Only a very few matters were left over for incorporation by the Drafting Committee. The House, however, would tender its thanks for his labours in putting them in order.

I am sorry, Sir, that Dr. Ambedkar should have gone out of his way to make certain references and observations which are not in consonance with the wishes or the spirit of the House, in regard to his references to the villages, and his reference to the character of the majority and 'constitutional morality'. Honourable Members have referred to the question of villages. I only wish to add this: He says: "I am glad that the Draft has discarded the village and adopted the individual as its unit." I would like to ask him where is the individual apart from the villages. When he says that the villages have been discarded and the individual has been taken into consideration, he has conveniently forgotten that the individuals constitute the village; and they number about ninety per cent of the population, who are the voters.

There is another matter which has been referred to by him; that is in regard to the character of the majority. He says, "the minorities have loyally accepted the rule of the majority which is basically a communal majority and not a political majority." I do not know what he has at the back of his mind. There was only one party which functioned on the political plane and on the Governmental plane, the Indian National Congress, which was entirely a non-communal organisation and a political party. And yet Dr. Ambedkar says it is 'basically a communal majority', which is not true in fact. I must say it is wrong, mischievous and misleading. I want to touch upon four points, *viz.*, the form of Government, the minority question, the language question and adult franchise and elections. I know with the limited time at my disposal I cannot develop those points at any length. However, I would like to touch upon certain aspects of the matter.

The Draft Constitution, Dr. Ambedkar said, is federal in composition. A careful reader of the whole Constitution would find that it is more unitary than federal. If I am to express my idea in terms of percentage, I am inclined to think it is 75 per cent unitary and 25 per cent federal. Many Honourable Members spoke strongly on the need for a strong Centre. I do not think there was any need for this kind of over-emphasis, for it is an obvious thing that the Centre ought to be strong, particularly in the peculiar context of the circumstances prevailing in the country. But I am afraid they are overdoing it. I fee' a strong Centre does not, and need not, necessarily mean a weak province. An attempt seems to be made and I find there is a tendency to over-burden the Centre and there is a tendency towards over-centralisation. I am glad Dr. Ambedkar has given a kind of warning. I am inclined to think that in actual working of the Constitution this course of taking

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more powers over to the Centre will be a fruitful source of friction. After all let it be remembered the strength of the chain is in its weakest link and the provinces should not be considered as a rival Governmental organization. The Centre is trying to chew more than it can digest. I find in the transitory provision there is an attempt for the first five years to take over even the provincial subjects. It is for the House to decide how far we can allow that.

Sir, coming to the minority question I am very happy to find that members belonging to the minority community are now coming round to the view that it is no good to have this kind of communal electorate even though in a diluted form in the form of a joint electorate. I am happy that Begam Aizaz Rasul has discarded this and does not want the separate electorate. Mr. Karimuddin also said the same thing but he wanted what is known as proportional representation through single transferable voting system. I am sorry to say that it is an attempt to come by the backdoor or side windows what is denied by the front door. This is not very proper and the suggestion that it may be done by proportional representation is absolutely unworkable and impractical, particularly in general elections where large masses of men and women who happen to be illiterates are concerned. Honourable Members may know that in that system the voter has to put numbers as 1, 2, 3 etc. against the names of candidates and it is very difficult and impracticable and therefore it is no good; and as Dr. Ambedkar said the minorities must trust the majority. There is one fundamental fact to be remembered. I am glad Mr. Tyagi emphasized that. Community should not be made the basis of civic rights. That is a fundamental principle that we must remember. In a secular State the right to representation is only the right to represent a territory in which all communities live and if a member is representing in the Assembly, he has the right to speak on behalf of all those living in the territory, of all communities and classes, men or women. That should be the idea with which we must function. I must take this opportunity of expressing my great appreciation of some minority communities who have been nationalistic throughout and who have not clamoured for special provisions only on the basis of birth or community. I refer to that community to which you, Sir, Mr. Vice-President, have the honour to belong. I have had opportunities of coming in close contact with Christian friends and throughout they have not demanded any kind of separate electorate or special provisions, and I am happy over that. If some members of minority community now do not want reservation, I may not give all credit to them as they are only making a virtue of necessity—this great Christian community have never asked for special considerations. They have all along been of the view that special electorates are no good and after all we must all live together and I am glad the Parsee community also had not wanted this special representation.

Then Sir, one Honourable Member wanted reservation in services. I should think though it is not undiluted nationalism, we must for some time to come give them reservation in services also. But one thing you must have clearly in mind. There must be a time limit for all these peace or compromise moves and you must make it clear that after the lapse of a certain specified period all these special provisions must go. I particularly support Mrs. Renuka Ray's suggestion that the last portion in Article 306 where it is stated that after 10 years this may be continued may be removed. We must give our view emphatically and definitely that it is only as a necessary evil that we are tolerating reservations on communal basis.

I want to say something on the language question. Much trouble arises on account of not properly defining what is exactly meant by national language. There is no doubt whatever that India must have a national language but you must remember that India is not entirely a country with one language existing

at present, and I am glad to find that the Draft Constitution has steered clear of all these controversies. They have simply said in Article 99 that in "Parliament business shall be transacted in English or Hindi". That is all. I do not think that the House need go into this question at present, as our Prime Minister said, of deciding upon a National language here and now. If at all we must have, let us have a language for the Central Government and then it must be made clear beyond a shadow of doubt that in the provinces the provincial languages and respective regional provincial languages shall be the official language for the territories comprised in the province. If that point is made clear beyond a shadow of doubt, much of the heat and much of the controversy will disappear. Let it be definitely understood that the regional language shall be both, in the legislatures and in the High Courts of the Provinces.

Sir, I have only one point more if you will give me two more minutes. That is regarding the election under adult franchise. Much doubt and apprehension is entertained in the minds of big constitutional experts like Mr. T. R. Venkatarama Sastry of Madras about the efficacy of adult suffrage; but it is decided and we cannot go back on it. But the most important point that I want to emphasize is that the elected representatives must truly reflect the will of the people. Unfortunately, Honourable Members know how elections are conducted. Today we find from the papers an Honourable Member of this Constituent Assembly went to poll to cast his vote at an election. He is told: "Your vote is already cast." That is nothing surprising. That is happening on a large scale everywhere. I stood for election in 1937 and in two or three elections I was personally interested. I knew actually twice the actual number of votes were not polled correctly. Some arrangement must be devised by which this sort of corruption at elections must be stopped. I have a suggestion and I shall place it before this House for consideration and leave it at that. Every voter must be given what is known as an identity card. The identity card may contain—it is a matter of detail what the identity mark should be. I would very much like a photo of the voter to be put in a card which he might carry. In the post office we are given what is known as identity cards on a payment of Re. 1. Our photo is put there and wherever we go we can carry it. If such a system or something similar to it is done, the voter must first present this identity card and on presenting it he will be given the ballot paper and then he will exercise his vote. I am prepared to discuss the details. This arrangement will be a great boon. If this suggestion is taken up and put in the appropriate place, I have no doubt that the elected representatives would reflect the true will of the people.

Shri Kishorimohan Tripathi (C. P. and Berar States): Mr. Vice-President, Sir, there has been sufficient discussion of the Draft Constitution and I have been very carefully listening to the criticisms. There have been two types of criticisms. Some of the critics have criticized themselves rather than the Drafting Committee. They took certain decisions and all those decisions were embodied by the Drafting Committee and where the Drafting Committee wanted to make its own suggestions it underlined the Draft and has tried amply to draw the attention of the House to the suggestions and changes that it wanted to make. Critics have criticised and in doing so, they have indirectly criticised their own decision. There has been another type of criticism which has gone rather astray and critics have tried to bring in things which we need not discuss while discussing the constitution of a country. I would not now go into the details of the Constitution, into the nature of the Constitution, into the economic or other provisions of the Constitution. Much has been said on those issues. But I tried to find out the place of the Chattisgarh States in the Draft Constitution; I looked into the Schedule enumerating the various units of administration and found their names nowhere; whereas as a matter of fact the administration of these States has been integrated with

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that of C. P. and administrative units,—Districts,—have been carved out of these States. I do not know why these States have not been treated as a part and parcel of the province of C. P. in the Draft Constitution. I would request for this change; and when I say so I however do not want to say that as a result of this integration the people have felt something very advantageous. In the transitory stage of integration, there have been a lot of difficulties to people. They have, in fact, suffered. Their conditions have become rather worse, but I believe,—and believe honestly—that all those are only passing phases and they will go and in the long run these small States when merged and integrated with C. P. would derive their own benefit. They are not in a position to form a Union in any way; they have not got sufficient economic and other resources to develop themselves and therefore in no case should they be treated separately.

Secondly, I will draw the attention of the House to the necessity of including co-ordination of agricultural development and planning in respect of food, its procurement and distribution, in the Union list as a Central subject. When I say so, I want to draw the attention of the House to the reply the Honourable Minister for Agriculture gave while replying to questions in the House when functioning as the Assembly that for want of proper provision or power it is not possible for the Centre to deal effectively with the question of agricultural development of the country. When we think of the reconstruction of the economy of India, the first and foremost thing that should strike our attention is the agricultural economy in India. If you want a planned development in India including agricultural economy, it is essential that agriculture —its development and planning— should find a place in the Union List rather than in the Provincial List. The food problem in India is very grave. It is going to be a serious problem for years to come and we have been spending most of our dollar and other exchange in getting imports of food from foreign countries and this has withheld and will be withholding our industrial development to a large extent. It is therefore very essential that a country-wide planning to develop agriculture to an extent where we can be self-sufficient in the matter of food should be treated as essential. I would therefore request the Drafting Committee to take into consideration this suggestion of mine and place the co-ordination of agricultural development as a Central subject. I am sure that the attention of the Drafting Committee has also been drawn to this subject by the Ministry of Agriculture also.

Then, I come to the question of India and her relationship to the Commonwealth. This question has yet been left undecided although references in the papers and in the speeches of Members have been made to it. I for one would like that India must declare herself an Independent Sovereign Republic. We should make no mention of our association with the Commonwealth in any part of the Constitution itself. Having declared herself a free and independent nation, India should then go to seek her association with one *bloc* or the other; but jumping from the present position of a Dominion to the relationship of the Commonwealth will inevitably mean that we are going to remain still a dependent country, dependent to the Commonwealth and the King of England.

Taking next the question of election in villages, much has been said about villages. There has been very sharp criticism of the view expressed by Dr. Ambedkar when he said that "the villages are dens of ignorance". There has been ruthless criticism. I know this criticism is because of a genuine feeling on the part of the House. The House desires that the villages should come forward and play their full part in the national reconstruction. Since the desire is very genuine, I would request the House to detail out the election procedure in the Constitution itself. While giving adult franchise to every citizen of India, the eligibility for election to legislatures should be restricted

to such persons as neither pay income-tax nor hold land in excess of 100 acres. That, I am sure, would bring in most of the villagers to the legislatures and they will be able to play their best role.

I now come to the question of the linguistic provinces. It is said in examining this question that the redistribution of provinces is essential only on the ground of language. That is a wrong theory to my mind. A province should be formed or carved out of India, bearing in mind its economic resourcefulness, so that it could give full opportunity of growth to every citizen in it. The discussion of linguistic provinces, the appointment of a Commission to consider the question only on the basis of language, has already created a sort of wild feeling in the country and even in the political parties this tendency has taken place. I heard the other day that the States of Manipur, Tripura and a district of Cachar are demanding themselves to be a separate province in the Congress body. There are other small unions who desire to continue to be separate units. This is very harmful to the nation and must be prevented.

Then coming to the question of language, I am one who wants that Hindi should be accepted as the national language of India, but when I say so I do not mean the Hindi which we find in the translation of the Draft Constitution.

Mr. Vice-President: The Honourable Member has already exceeded his time.

Shri Kishorimohan Tripathi: Well, Sir, as I have no time, I close with these few words. I support the motion moved by Dr. Ambedkar.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): Sir, it is with a certain amount of hesitation that I am going to speak before you in English. It appears that a sort of misunderstanding has been created amongst a section of our Friends, particularly those from Southern India, that we speak in Hindi because we want to shut them off from our own ideas. I must assure them that it is not a fact. The real fact is—and I want to say so quite frankly—that we can express our ideas ten times better in Hindi than in English. This is the only reason why some of us always speak in Hindi. But in deference to the wishes of those friends I am going to speak in English.

To come directly to the subject matter, it has been a formality with almost all the speakers to congratulate the Members of the Drafting Committee and its Chairman on the labour they have put in and also on the merits of the Constitution. I would not undergo that formality. There is no doubt, of course, that they have put in a good deal of labour and have placed before us a complete picture of a Constitution on the principles that we laid down in this Constituent Assembly. I am also aware that there is a good deal of merit in the draft Constitution. They have no doubt thoroughly studied the constitutions of different countries and have tried to make a choice out of them and to adapt those constitutions to the needs of this country. This is the chief merit of this Draft Constitution. In one word, it is an 'orthodox' Constitution.

But along with its merits we have also to see as to what are the defects or demerits and omissions in this Draft Constitution. We should then try to remove those defects and omissions.

Before I point out these glaring defects and serious omissions, I would like to draw your attention to certain observations made by the Mover of the Draft Constitution. I would not go into unnecessary details, because those points have been effectively dealt with by a number of previous speakers. But I cannot refrain from making certain observations. The one thing—and to me it appears very objectionable—which I wish to reply to is Dr. Ambedkar's remark that the Indian soil is not suited to democracy. I do not know how my friend has read the history of India. I am myself a student of history and also of politics and I can say with definiteness that democracy flourished

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in India much before Greece or any other country in the world. The entire western world has taken democratic ideas from Greece and it is generally regarded that Greece was the country where democracy first of all flourished. But I say and I can prove it to the hilt that democracy flourished in India much earlier than in Greece. I shall not go into the facts and figures, yet, I would draw his attention to two or three points with regard to this matter. He might remember, as I know he has read history and he is also a scholar of Sanskrit, that even during the time of Buddha, democracy flourished in India. It is an oft-quoted phrase which I want to repeat here and it is this: that certain traders went from northern India to the south. The King of southern India asked them as to who was the ruler of northern India. They replied: "Deva, Kechiddesha Ganaadhinah Kechid Rajaadhina" (देव, केचिद्देशा गणाधीनाः केचिद राजाधीनाः) It means: some of the countries in the north are governed as republics, while there are others which are governed by kings.

Then, coming down to the period of Alexander, we find that the historians of Alexander have praised very much the city-states of northern India which were governed on democratic lines as republics. There is no doubt that later on the course of political development was arrested for sometime on account of invasions from outside. Yet we find that the same democracy continued to function in our villages under the name of village republics. This, the Mover himself has admitted in his address. It is very unfortunate that he should have made such remarks as are not borne out by the facts of history.

As regards the defects in the Draft Constitution I would now draw your attention to the Objectives Resolution itself. Even that has been sought to be changed. The word 'Independent' has been sought to be changed into 'democratic' and the word 'republic' has also been sought to be changed into 'State'. I think the Drafting Committee should not have done it. The very suggestion of such a change is repugnant to us and I hope that this thing will not be accepted by the House.

Then, coming to the Fundamental Rights, we find that while freedom of speech and freedom of association etc. have been given by one hand, they have been taken away by the other. The Clauses that follow have done away with all those rights which have been given in the first clause of Article 13. Similarly, if we look at the Directive Principles of State policy, we find the same thing. You will remember that I placed before you an amendment seeking to add the word 'socialist' before the word 'republic'. I am sorry that at that time Shri Seth Damodar Swarup did not think it proper to support me. I am glad he has now come here as a champion of socialism. But at that stage, I am sorry nobody supported it and my suggestion was rejected. Anyhow, whether the word 'socialist' is used or not we must try to see that, when we incorporate political democracy, we also incorporate economic democracy in the Constitution.

So far as the Directive Principles of State Policy as given in the Draft Constitution are concerned, there are no grounds for thinking that they will at all affect the future structure of society in India.

There are certain other defects also which I shall point out when the amendments are moved and discussed.

But I would certainly like to mention some of the grave omissions in the Draft Constitution. There are three such omissions which are very grave and important, and they are: the omission of National Flag, the omission of National song and the omission of National language. I think these three omissions are very grave. The Drafting Committee ought to have seen its way to

incorporate all these three subjects in our Constitution. So far as the flag is concerned, there is no controversy. This could have been easily incorporated in the Constitution.

There is some controversy about the National song between *'Vandemataram'* and *'Jana-Gana-Mana'*. I think *"Vandemataram"* which has been our song during the last 50 years or so and which has been the beacon-light in our struggle for independence will become the National song of our country.

Then there is the question of the National language.

Mr. Vice-President: If you go on speaking I will have no time to give to other intending speakers.

Shri Vishwambar Dayal Tripathi: I shall conclude my speech after a reference to the National language, Sir.

Our country is very big, and it has not therefore been possible so far to have one language for the whole of India. But, as an independent country, we have now to evolve some language which may become the national language of India. In this connection I make the following suggestions:—Firstly, in every province the work of the Government and of the people should be carried on in the language or languages of the masses. Secondly, English, although it has been imposed upon us by the foreigners, should remain for sometime for our inter-provincial relations. Thirdly, we must have Hindi as our National language written in Devnagri character. (Cheers). So, it is here and now that we should definitely decide that Hindi written in Devnagri character is to be the national language of our country; while English may remain as an alternative language for some time till we are able to develop Hindi sufficiently both in northern and in southern India. As I said, in the provinces, the language of the masses should continue to be the language of the State. These are my observations about the National language.

The last point which I have to place before you is that we should, from cultural as well as from economic point of view, make provision for cow-protection. Our Congress party had already decided that this should be done. This was probably not known to the Drafting Committee. Therefore no provision with regard to this has been incorporated in the Draft Constitution. I hope the Constituent Assembly will see its way to incorporate this also in our Constitution.

With these few words, I hope the Assembly will consider the amendments on these subjects when they come up for discussion and try to remove the defects and fill in the omissions that I have pointed out before the House. Jai Hind.

Shri Brajeshwar Prasad (Bihar: General): Mr. Vice-President, Sir, I am opposed to federalism because I fear that with the setting up of semi-sovereign part-States, centrifugal tendencies will break up Indian unity. Provincial autonomy led to the vivisection of the country. Federalism will lead to the establishment of innumerable Pakistans in this sub-continent.

Our Ministers at the Centre have been at the helm of affairs since the last fifteen months. They know how difficult it is to secure the approval of provincial Ministers on any measure of reform which they like to introduce. Much time is wasted in securing their approval, which is rarely obtained.

The existence of provincial governments does not benefit the common man in any special sense. Its abolition will not jeopardise his welfare at all. On the other hand, I am convinced that his lot will improve considerably. The professional politicians will of course be deprived of their means of livelihood. The average man in the provinces has to bear the burden of a costly administration. Salaries to Governor, Ministers, Parlimentary Secretaries and members of the legislatures swallow a large part of the revenue. The poor man is exploited in order to maintain the dignity of the State.

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Federalism is a conservative force in politics. It checks the rise and growth of radical economic movements. It perpetuates economic inequality between one province and another and this accentuates provincial rivalries and bitterness which lead to the demand for the formation of linguistic provinces.

Federalism is entirely unsuited to the needs of a collectivist age. Vast plans of national development await immediate enforcement. It will be a crime against the people of India to set up obstacles and hurdles in the form of part-States in the path of the Central authority which has to tackle the four-fold problems of illiteracy, poverty, communalism and provincialism. Those who talk of federalism, regionalism, provincial autonomy and linguistic provinces do not fully comprehend that they are talking the language of a bygone age. These concepts were appropriate to the needs of the 19th century when industrialism was in its incipient stage. These instruments of political organisation suit the requirements of agricultural communities interspersed over a wide area. Today the picture is entirely changed. We are thinking in terms of a world State which must be vested with all powers to regulate the problems of migration of people from overpopulated zones to areas which are underpopulated. The world State will have all powers to regulate the entire economic wealth of humanity. The existence of Nation-States has become an anomaly and a hindrance in the path of human progress and welfare. The dominant tendency of the age is towards greater concentration of power in the hands of some sovereign international authority. To talk of sub-national groups and federalism is to put back the hands of the clock. We do not know what will happen to India if a world war breaks out. If India gets an opportunity to build up the nation for a period of ten years at least, she will be in a position to meet the onslaughts of international powers. If India proceeds on collectivist lines unhampered by any provincial or federal part-States, she may be in a position to meet the challenge of the third world war. India lags centuries behind the Great Powers of the world. We must skip over certain stages of development and compress centuries into moments if we are to survive the forces of reaction both external and internal. By adopting parliamentary federalism we shall be playing into the hands of our enemies. A divided Germany, a vivisected Korea, pre-eminently fits into the political plans of international gangsters. A divided India provides some security to those who have plans of their own. The incorporation of federal principles in that part of India which has been left to us will provide hundred percent security to those Jingoes and Junkers who survive on loot and plunder. No foreign power wants a strong Central Government in India. A strong Central Government in India will embarass all. It is suicidal to divide powers into federal, concurrent and provincial. Any such division of powers will weaken the hands of the nation on all fronts.

Shri S. Nagappa (Madras: General): Can any Honourable Member read his manuscript speech?

Mr. Vice-President: I do not see any objection. Please go on.

Shri Brajeshwar Prasad: The Collector in the district and the Commissioner of the Division must be brought directly under the authority of the Central Ministry of Home Affairs. The Governors, Ministers and the provincial legislators must be asked to quit the scene. There should be only one Government in India. All provincial and State Governments must be abolished. The Constituent Assembly should vest all executive, legislative, judicial and financial powers in the hands of its President. He should have four advisers, Rajaji, Panditji, Sardar Patel and Moulana Azad. After having set up this system of government, the Constituent Assembly should be adjourned *sine*

die. The Assembly should be summoned only to give its verdict in case there is sharp difference of opinion on any issue between the majority of the Advisers on the one side and the President on the other. If the President or an Adviser dies, the Constituent Assembly must be summoned to elect a successor. This system of Government should last till the end of the Third World War which may break out any moment. The present Government of India Act should be abrogated.

I have advocated the rule of philosopher-kings because Plato, whom I consider to be the Father of Political Science, considered it to be the best system of government. We look back with pride to the days of Raja Ram of Ayodhya and Raja Janak of Mithila. What Plato advocated in his Republic has always been practised in India. I have advocated the rule of philosopher-kings because this is the best system of government. I have more faith in living people than in the dead clauses of a written constitution. I do not believe in a permanent constitution. We are at the end of an epoch. It is very difficult for us to sense the needs of the coming century. The Americans framed their constitution at the beginning of the epoch of capitalism. We are asked to frame our constitution at the end of this epoch. The end of the third World War will decide the broad economic and political patterns of the coming age. Today we are in a state of ferment and decay. The whole of Asia is in the melting pot. The nation stands in need of spoon-feeding. We are passing through the birth pangs of a new social order. Any constitution which we may frame today may become completely out of date tomorrow. Power placed in the hands of the electorate may prove disastrous.

The traditions of the Khalifas of Islam—Abu Baqar and Shah Omar—are worthy of emulation. Germany, Italy and Turkey rose to grand heights under Hitler, Mussolini and Kemal Ataturk. The Soviet dictator has worked miracles. The days of Chandragupta Maurya, Asoka, the Guptas, Harshavardhana and Akbar were the best periods of our history when India enjoyed peace and progress..

There is no parliamentary form of government worth mentioning in the whole of Asia. There are some deeper reasons for this. Any attempt to foist parliamentarism on India will only spell our ruin and misery.

I regard the parliamentary system of government as the direct form of democracy. The system of government set up by Hitler, Mussolini, Kemal Ataturk and Stalin represent the indirect forms of democracy. The whole of Germany, Italy and Turkey were behind the dictators. What Pandit Nehru is to us, probably that or more is Stalin to the people of the Soviet Union. How can we call the Soviet rule undemocratic? The only conclusion to which we are driven is that the basis of all governments—both parliamentary and totalitarian—is democratic.

The essense of democracy is not franchise. The representation of the real will of the people, as distinct from actual will, is the core of democracy. One man, whether elected by the people or not, can represent the people as a whole if he stands for the real will of the community. The rule of the dictator is essentially democratic if he stands for the greatest good of the greatest number. The substance is always more important than the form.

One party rule is in perfect consonance with the ideals of democracy. This fact has to be grasped. We can have perfect democracy only in a classless society. It is only after war, and nation states and capitalism have been liquidated, that we can achieve perfect democracy. Friends may retort that one party rule will lead to Fascism. To this I would reply that parliamentary governments, as in Germany and Italy, facilitate the rise of Fascism if the people are not highly conscious of their political responsibilities. Are the

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people of India conscious of their political responsibilities? The vast majority of the people of India are sunk in the lowest depths of illiteracy, poverty, communalism and provincialism. Only philosopher-kings can tackle these problems. Both parliamentarism and federalism will aggravate the malady.

Critics may urge that power corrupts and absolute power corrupts absolutely. I do not believe in this maxim. Was Hitler corrupt? Is Stalin corrupt? The records of Mushtapha Kemal and Mussolini are as good as that of the leaders of parliamentary democracy.

In this atomic age, the problems of the modern state have become so complex and baffling that more and more people are beginning to realise that the affairs of government can only be tackled by experts. Parliamentary democracy has outlived its utility.

If we want to meet the challenge of Anglo-American imperialism in Asia, if we want to meet the demands of international trade and commerce, if we want to meet the threat of the third world war which is looming large on the horizon, if we are to meet the onslaughts of international politics, we must hand over full power into the hands of our leaders.

It is not possible for our foreign friends to meddle in the affairs of Spain or the Soviet Union because they have hung an iron curtain around their frontiers. Parliamentary democracy facilitates foreign intervention into the internal affairs of a people. If we want to be free from the machinations of our foreign friends, we should not provide any opportunity to them. Our constitution must be fool-proof and knave-proof. Parliamentary democracy must be discarded.

Dr. Ambedkar said the other day that our Constitution is both federal and unitary. It is federal during times of peace and it is possible of being converted into unitary type during times of war. The distinction between peace and war is fictitious, because we are now living in a state of cold war. If we want to meet the onslaught of foreign powers the type of democracy which we are trying to build will perhaps obstruct us. The demands of peace time are as urgent and insistent as that of war. If we have an unitary type of constitution now, we may be able to meet the demands of the third world war. I do not know whether there are more competent leaders than Pandit Jawaharlal Nehru and Sardar Patel. Then why are we wasting the time of the Government of India by all sorts of criticisms? We must build up our economy. If we are not able to meet the challenge of war, we may go down in history. I am not very sure what will be the outcome or the fate of this country if a war breaks out. The whole of Asia is in the melting pot; let us not try to weaken the hands of our leaders. They are the best people; they are the only people who can govern this country. Is it necessary that in order to keep them in control, we must be sitting in the legislature and talking all kinds of nonsense?

The Assembly then adjourned for lunch till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Shri H. V. Kamath (C.P. & Berar: General): Before we proceed, Sir, with the further consideration of the Motion, may I ask for a ruling from you as to whether the use of the word "nonsense" to describe the speeches of Honourable Members of this House conforms to parliamentary practice?

Mr. Vice-President (Mr. H. C. Mookherjee): I do not think it is in order.

Shri H. V. Kamath: This arises out of the speech made by Mr. Brajeshwar Prasad. He did use the word 'nonsense' to describe the speeches of Honourable Members in this House. That is why I am raising this point.

Mr Vice-President: Is he present here?

Shri Brajeshwar Prasad: I did not know it was unparliamentary; if it is so, I withdraw it, Sir. I would replace it by any other word which the honourable Member may suggest.

Mr. Vice-President: We shall now resume further consideration of Dr. Ambedkar's motion.

Shri Moturi Satyanarayana (Madras: General): *[Sir, you will be surprised to know that a person from Madras has come here to speak in Hindustani. The general belief so far was that all the Members from Madras would like to speak in English. I am not surprised at this. It is my conviction that all the speeches in this Assembly should be delivered in Hindustani. It is, however, very unfortunate that even though people have worked for this cause for the last thirty years, Hindustani-speaking people have not secured election to this House from the south, the east and the west. It does not mean that there are no Hindustani-speaking people in these provinces. Only, Hindustani-speaking people have not been able to secure election to this Assembly. I see that even the Members from the north speak in English only. The reason may be that they want to have closer relations with the people of the South and other provinces. Whatever may be the reason, the fact is that they do speak in English.

The Constitution which is now on the anvil places before us provisions of many kinds. It appears to me from what I have been able to gather from these provisions that it is being built from above and not from below, the base. If it had been built from the base upwards, our Constitution would have first been framed in the languages of our country. The people know what that swaraj means for which we have been labouring for the last thirty years and for which we have been fighting for the last thirty years, and they are also conscious that the Constitution is being framed for them and not for anyone else. But only the international view-point, and not the national nor the swaraj, nor even the villagers' view-point is being given weight in the framing of this Constitution. We want that the Constitution for the whole country should first be framed in the language of the country, that the Constitution should be for the people of the villages so as to ensure food and cloth for them, as it was the lack of these necessities that led us to make our demand for swaraj. It would be very good for us if the Constitution is framed in the languages of the country. It may afterwards be translated into English or into the languages of the countries whose constitutions we have drawn upon, of those whose opinion we value. It would have been much better if we had seen to this matter in the very beginning. If this consideration had

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* [ ] Translation of Hindustani Speech.

[Shri Moturi Satyanarayana]

been kept in mind from the very beginning, we would not have had occasion to listen to all the criticisms that have been made today in this House—that this Constitution is not suited to the genius of our country, that it is not suited to the people of the villages, that it is not in the interests of the people of the cities and that it is not in the interests of the poor. We did not keep that in mind in the beginning and that is why there is all this criticism. I hold that if we have to provide food, cloth and shelter for our poor brethren, the villages and the village panchayats, should form the base of our Constitution. We should proceed with our work keeping them in mind. It is because we have not done this that we have to consider whether our provinces should be strong or weak, whether our Centre should be strong or weak. These questions arise only because we have not given due importance to our provinces and villages in framing our Constitution. The basic idea underlying the whole constitution is as to how our country will compete with Britain, Russia or America and what relations it will have with them. There is nothing in the whole Constitution to show that our intention was to do something for the inhabitants of our country, for our villagers and for our townsfolk, and for the poor people.

So far as production is concerned, there is nothing in it that would make the village people work their utmost in order to produce the maximum quantity of wealth. I think that it will be said in reply to this that later on when this Constitution would be enforced all these would be taken to be implied by its provisions and would therefore be put into practice but that these cannot be specifically included within the Articles of the Constitution. But I hold that just as the face is to a man's character, so also a mere glance at the Constitution should be sufficient to reveal the direction in which it tends to move the ptople. Therefore, I hope that at the time when the Constitution would be considered here clause by clause every attempt will be made to include in it provisions for all that we have been promising to provide to our countrymen.

For the last four or five days a very important problem—the problem of the relations that should subsist between the State or national language and the various provincial languages—has been engaging our attention.

There has been ample discussion as to what should be the position of the national language and the position to be given to the various provincial languages. I hold that unless we decide as to what would be the place of provincial languages, how they would be used in their respective provinces, no decision can be taken about the national language. In my opinion, our provincial languages must not have a less important place than that of our national language. If a decision is not taken in regard to this matter there will be a very powerful agitation in the country and many people will say that the people of northern India who hold Hindi as national language are trying to make their own language the national language. This will have a serious consequence in the provinces and they will oppose it and as a result the country will be split up into many divisions, as of old. To prevent this, it is very essential to make it clear that in no case the state language would take away the importance of provincial languages. If this is not done, there is a possibility of a very serious danger arising for the country. It must be averted. The purpose for which a State language is needed is to establish unity within the State. Another function it fulfils is to facilitate the carrying on of international relations. In my opinion it is very essential for us to build up a composite culture, a composite language and a composite society. The assimilation of the culture and the language and the dress of all those who come to our country has been a part of our tradition for centuries. We did this and marched on the path of progress. We should adopt that practice for the future

also. If we fail to do so, it is very possible we may not make such rapid progress in international matters as our Prime Minister has in view. On the contrary, it is quite likely that we may remain involved in our own internal disputes. It is better if we avoid it. Merely to hold this view is not sufficient. We must also act upon it. Therefore, I hope, Sir, that the language which is going to be made our national language, which is going to be used here, must be the link of a composite culture, must have a mixed vocabulary, a mixture of phrases and idioms and a composite script so that we may have mutual understanding within the coming ten or fifteen years, and thereafter be able to march forward together. Till that time we should not take any step to give up our composite culture. In short I would like to submit that our national language should be Hindustani and our culture should be Hindustani.

In regard to the national script I submit that until all our people have learnt to write in a common script—and today they use two separate scripts—both the scripts should be given recognition so that no one may have any occasion to complain that his script which he had been using for centuries was being suppressed after the attainment of freedom and that thereby his culture and religion was being suppressed. If we are prepared to continue to use the English language for the next fifteen or twenty years, I do not find any reason why the other current languages cannot be kept on for that period. Today some people complain that alien words are being imported into their language. But we should not only keep these words but should also extend their meaning. I, therefore, think that both from the view point of justice as from that of expediency it is essential to be fully considerate in such matters.

I would like to discuss this subject much more fully and perhaps it is not difficult to speak at length on it. But there have been so many longwinded speakers since this morning—several of whom you pulled up rather sharply—that I do not wish to take any further time of the House and I now conclude my remarks. I would, if I get an opportunity, express my views at the proper time on the amendments that have been tabled.]

Shri Suresh Chandra Majumdar (West Bengal: General): Mr. Vice-President, Sir, it is with deep humility in my heart that I rise to speak a few words on the onerous task which history has assigned to this Assembly, namely, the making of a democratic Constitution for this great and ancient land whose civilization dates back to an age beyond man's memory. No nation has had such varied experience of success and failure, of happiness and sorrow, of fulfilment and frustration as ours. Among the many lessons with which our history is replete, there is one which in my opinion should command our utmost attention as we are engaged in settling the forms of our State and Government. It is this that throughout history our finest glories in whatever field they might be, were achieved precisely during those periods when India, striving towards political cohesion was most successful and such cohesion always presupposed a strong unifying Central authority. The form of that authority was different at different times and of course we shall have to evolve one that will suit the conditions of the present age but the truth remains that India's greatness depends as it has always done on the effective strength of a unifying Centre. I therefore want the Constitution to provide for a strong Centre and am glad that the Drafting Committee had kept this point prominently in their view. The time has now come to curb the bias in favour of the so-called 'provincial Autonomy' which arose from historical causes. When Alexander attacked India we understand that India was divided into 52 autonomous units and we know what consequences it produced. It might have had some justification when the Centre was irresponsible and completely under alien domination. Even so, 'provincial autonomy' encouraged provincialism and that the curse did not assume greater proportions was due wholly

[Shri Suresh Chandra Majumdar]

to the unifying influence and control which the All-India Congress exercised over the provincial ministries. Now there is no foreign power in the land and there should be no conflict between the provinces and the Centre; and as between the provinces themselves, possibilities of conflict can be best lessened by the Centre being given power to intervene effectively whenever and wherever provincial jealousies may threaten the unity, or impede the progress of the country as a whole. I therefore want that it is not only at times of war or other grave emergency that the State should function as a unitary State but that in normal peace time also the Centre should have certain necessary overriding powers without which planned reconstruction of the country will not be possible.

While on the subject of delimitation of powers, I should like to make a very brief reference to Dr. Ambedkar's comments on the role of the village community in India's history. It is true that at times the village community stood still when history passed by. But this happened invariably in periods of national depression when everything was in a state of stagnation and the political life itself was disintegrating and the village community was indifferent to the main course of history. But there were other times—times of healthy national life—when the village community did supply strength. I believe the village community, if it is properly revitalised and made power-conscious, can become not only a strong prop of the State but even the main source of its strength.

India has been always proud—and I also share that pride—of her achievement of cultural unity in diversity, but in matters political it is essential today that we emphasize unity and uniformity rather than diversity. I therefore want a uniform political structure for the whole country. No praise can be too high for the wonderful work of integration which the States Ministry has done and is still doing under the creative, I should rather say, inspired leadership of our Deputy Prime Minister and I hope this work will proceed further to the point where the viable States and the States' Unions will have the same political and administrative organisations as the other units—I mean the present Provinces—within the over-all political structure of the country. In view of the basic character of these units as recognised by the Chairman of the Drafting Committee himself, I do not even like them to be called "States", because that may create an impression that India is a Federation of the type of the United States of America. All units, the present Provinces as well as the integrated States, should be given the uniform nomenclature of "Province".

I am proud of the achievements not only of my own language but, as an Indian, also of those of the other major languages of India. I certainly want a *lingua Indica* for the whole country, but at the same time it will be an irreparable loss if we allow the major provincial languages to languish by neglect. The *lingua Indica* that we may adopt should not be a kind of imposition. It will be willingly accepted by all if it is allowed to make its way gradually and naturally and without giving a rise to a feeling of imposition. The previous speaker, Shri Satyanarayana, is an outstanding example of this. Nobody imposed upon him Hindi or Hindustani, but Honourable Members have heard the fluency with which he spoke just now. As regards English we need not ignore its usefulness as a medium of international exchange, and even in the sphere of internal use I am not in favour of violently throttling it but would like to see its gradual replacement. It may not be wise to set a time limit in a matter like this.

It is unfortunate that the question of linguistic provinces has become mixed up with provincialism. The principle of linguistic provinces can be justified only on two grounds, namely, administrative and educational con-

venience and the development of our great major languages. It would be wrong to introduce any other consideration into this matter, which unfortunately has become a subject of violent controversy and even conflict. Possibly we are all suffering from the hang-over of our depressed condition which is only just over and under which our foreign rulers always emphasized and encouraged the spirit of division. I hope we shall be able to see things in their proper perspective after some time. It is essential that at this stage all internal conflicts should be avoided. If, therefore, the question of linguistic regrouping of provinces cannot be settled without bitterness and conflict now, I think the question should be postponed for ten years. I would only urge that the Constitution should not contain any such provision as will make a settlement of this question too difficult in the future. At the same time I would appeal to all my countrymen meanwhile to behave in a manner so as not to prejudice the rightful claims of any language Hindi or Hindustani as the *lingua Indica* of India. It is due to my great love for all the major Indian languages as well as to the necessity I feel that all our countrymen should understand and follow the Constitution, that I have asked that the Constitution be made available in all the major Indian languages and approved by this Assembly before its final adoption.

One word more. I hope I will not be misunderstood in saying this in this Gandhian era. I want to say a few words regarding the right of the people to bear arms. We are passing the Constitution today. But so far as I can see there is no mention of that. I would like that the House may provide in the Constitution that as a fundamental right, all adults, irrespective of whether they are men or women, would be allowed to bear arms for the defence of Mother India whenever she would be in peril. Jai Hind.

Pandit Mukut Bihari Lal Bhargava (Ajmer-Merwara): Mr. Vice-President, Sir, the Draft Constitution has been under fire for the last several days in the House. I would not deal generally with the Draft Constitution but would confine my observations to one particular aspect of the Draft Constitution, and that is what is incorporated in Part VII of the Draft Constitution. It deals with what are known as the Chief Commissioners' provinces under the present Government of India Act of 1935. At the very outset I would respectfully draw the attention of the House that in this particular case the Drafting Committee and its Chairman have been very very unjust to the Chief Commissioners' provinces. In fact, in making the recommendations which the Drafting Committee has made in Part VII of the Draft Constitution, it has exceeded its powers. It is absolutely clear; if necessary, reference may be made to the resolution adopted by the House on 29th August 1947, which brought the Drafting Committee into existence. The powers of that Committee are specified in the Resolution that was adopted by the House on the occasion. It is simply to implement the decisions that have already been taken by the House. When the question of the Chief Commissioners' provinces came up before the House, from the Union Constitution Committee Report you will be pleased to find that in part VIII Clause 1 what was recommended by the Union Constitution Committee was that the Chief Commissioners' provinces should continue to be administered by hte Centre as under the Government of India Act, 1935. When this clause 1 of part VIII of the Union Constitution Committee report was moved by the Honourable Sir N. Gopalaswamy Ayyangar in the House, an amendment to it was moved by my friend Mr. Deshbandhu Gupta and that amendment was unanimously accepted by the House. That amendment sought the setting up of an *ad hoc* committee consisting of seven Members of this Honourable House, which committee was to go into the question of the Chief Commissioners' provinces and to make suggestions for effecting changes in the administrative systems of these provinces on democratic lines so as to fit in with the changed conditions

[Pandit Mukut Bihari Lal Bhargava]

in the country. The fact that this amendment was unanimously accepted by the House clearly implies that the House stands committed to bringing about suitable administrative changes in the set up of these provinces on democratic lines so as to fit in with the Republican Constitution of free India. Inspite of this mandate from the House, one is staggered to find the recommendation of the Drafting Committee in Articles 212 to 214 of the present Draft Constitution. My respectful submission would be that these recommendations are absolutely *ultra vires* inasmuch as the Drafting Committee could not set at nought the recommendations of the *ad hoc* Committee. The *ad hoc* Committee consisted of three very distinguished Members of this House,—Sir N. Gopalaswamy Ayyangar, Mr. Santhanam and Dr. Pattabhi Sitaramayya. Inspite of this the unanimous recommendations of the *ad hoc* Committee have been set at nought by Articles 212 to 214. What Article 212 does is to provide that the Chief Commissioners' provinces shall continue to be administered by the President to the extent he thinks fit, through a Chief Commissioner. What the Drafting Committee has done in this Article 212 is simply to repeat the words of the Government of India Act, 1935 Section 93(3). These were the very words, which by the acceptance of the amendment of Mr. Gupta, were set at nought by the House. Consequently, my submission is that the present Articles 212 and 213 are absolutely *ultra vires* and the House should not give any consideration to them. The *ad hoc* Committee after going into the question of the Chief Commissioners' provinces has incorporated certain recommendations to make certain administrative changes in the present constitution of the Chief Commissioners' provinces. In fact, in the modern age when India has attained the goal of full independence and when we have assembled here to draft a constitution befitting a free Republican India, it is impossible to think of a recommendation of the character incorporated in Articles 212 to 214. These recommendations seek to perpetuate a regime of autocracy. The Chief Commissioners' provinces have been enclaves of bureaucratic and autocratic regimes and even today, fifteen months after having attained full independence, we find there is undiluted autocracy prevailing there. For political and strategic reasons the British Government ignored the claims of the Chief Commissioners' provinces to responsible government. The only concession they made was in 1924 when a single seat was allotted in the legislature. Beyond this, the administrative set up in these provinces continue to be that of one man's rule. The Advisory Councils to the Chief Commissioner which were set up immediately after the formation of the National Interim Government at the Centre have served no useful purpose. Inspite of them, one man's rule is prevailing. So far as Ajmer-Merwara is concerned, the administration there is a hot-bed of corruption, nepotism, favouritism and inefficiency. How can this deplorable state of affairs be brought to an end until and unless the accredited representatives of the people are given a voice and a hand in the administrative set-up? The demand for the establishment of responsible government in these Chief Commissioners' provinces has been repeated from every one of them. No less than three Conferences convened during the last two years in Ajmer-Merwara have repeated this demand for immediate establishment of responsible government. The Provincial Congress Committees have also done so in every place. Notwithstanding this, the autocracy has prevailed and these three Articles—212 to 214 of the Draft Constitution—aim at perpetuating this system of autocracy. I appeal to this august House, how on earth can this state of affairs be tolerated by an Assembly which has assembled to draft a constitution for free India? Yesterday there was reference made to One-Rajputana Union. We all want territorial integration and administrative cohesion of the different Rajputana States into one single unit and every one desires that this should be an accomplished fact as soon as possible, but till that takes place, why should the

present administrative set-up be allowed to remain? We do not know what is going to be the future picture of Rajputana Union. If and when it comes, Ajmer-Merwara would always welcome any such move and Ajmer will be glad to join in any such Rajputana Union provided its historical, geographical and cultural place, which has always been its own since the dawn of history, throughout the Pathan, Moghul, Maharatta and the British periods, is retained in the future set-up of such Union. But because the existence of such a Union is a possibility or even a probability it does not mean that the autocratic system should be allowed to continue. To the other Chief Commissioner's province, i.e., Delhi, a reference was made about it yesterday. Regarding Coorg, its position is also identical and analogous. The Legislative Council there has only advisory functions and it has neither legislative power nor any voice in the day to day administration. There also the demand of the people has been the establishment of responsible government. I fail to understand what can possibly be the difficulty for this House to accept *in toto* the recommendations of the *ad hoc* committee. The *ad hoc* committee has been careful in its recommendations. It has recommended that, looking to the financial difficulties of those tracts, it will be necessary that the Centre here should have greater powers than it has in Governors' provinces. We, the representatives of the Chief Commissioners' provinces, in spite of our unwillingness, agreed to accept those restrictions only as a compromise measure. Fiscal autonomy is conceded only in name, because all the financial proposals will have to be previously approved by the President of the Union. Similarly, in the legislative sphere also what has been recommended is that every Bill before it becomes law must be assented to by the President of the Union. It has also been provided in the *ad hoc* committee's report that in case of any difference of opinion between the Lieutenant Governor and the Ministers, the President will have the final voice. Consequently there cannot be room for any apprehension in accepting the recommendations and granting some form of responsible government to Ajmer-Merwara and the other Chief Commissioners' provinces.

One argument that has been repeated often is that it is not a viable unit, that it is not self-sufficient and that it is a deficit province. I would respectfully ask who is to be blamed for this? Ajmer-Merwara people never wanted that they should be segregated and left as an island in the midst of the Rajputana States. It was the responsibility and the decision of the then Government at the Centre that Ajmer-Merwara should remain as a separate entity in order that it may be the citadel of the Centre to keep its clutch firmly on the neighbouring States. Therefore why should the people be subjected to any penalty now? As I said, it was for strategic and political reasons that it was left as an island. That being so, may I ask why the Central Government was giving subventions to N.-W.F.P. of about a crore of rupees and subvention also to Sind? Now if it decides to give today subventions to Assam, Orissa and also West Bengal and East Punjab, it is for strategic reasons and for protecting the frontiers. If that is the case, why should not Ajmer-Merwara also be given subvention? For the reasons placed before the House by me, Articles 212 to 214 are absolutely *ultra vires* of the powers of the Drafting Committee and the recommendations of the *ad hoc* committee appointed by this Honourable House, which already stands committeed to a policy of accepting suitable administrative changes in the set-up of this province, should be accepted.

With these remarks I support the motion for the consideration of the Draft Constitution by the House.

Mr. Vice-President: There is an established convention that in the case of a Member who is not present when his name is called by the Chair to participate in the debate, he loses his right to speak. That happened to one of our colleagues at the beginning of today's sitting of this Assembly. He has ex-

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plained to me that his absence was due to unavoidable reasons. If I have the permission of the House, I will give him a second chance to speak. As no one objects I give him permission to speak and call upon him to address the House.

Shri S. V. Krishnamurthy Rao (Mysore): Mr. Vice-President, I thank you for giving me an opportunity to speak on the Draft Constitution. I join the various speakers who have paid a chorus of tribute to the Drafting Committee and its Chairman, Dr. Ambedkar.

An attempt has been made in this Draft Constitution to put in the best experience of the various democratic constitutions in the world, both unitary and federal. Of course no Constitution can be perfect and even our Constitution will have to udergo some modifications before it finally emerges from this House.

I shall first refer to the Directive Principles of policy. I submit that this contains the germs of a socialistic government. I submit that this Chapter should come in immediately after the Preamble. As objective principles of the Union, we will be giving it greater sanctity than to others and it will stand as the Objective Principles of the future Government. With certain modifications they can be adopted as a socialist programme for the future Parliament of India.

The next thing I wish to refer is the Fundamental Principles. I find certain conspicuous omissions here. In most of the democratic constitutions, the freedom of the press is guaranteed, but in our Constitution I find it is not there. Of course there is freedom of expression. But I feel in a country with 87 per cent illiteracy, our press has to play a very important role both in the political and democratic spheres in the education of the masses. I feel that a specific provision should be made in the Fundamental Principles guaranteeing freedom of the press. In fact in the Constitution of the United States of America it is enacted that the State shall not pass a law restricting the freedom of the press. Similarly, the inviolability and the sanctity of the home should be guaranteed. Similarly again, I feel that no citizen of India should expelled from the State. Such a provision should find a place in the Chapter on Fundamental Rights.

One thing I would like to see omitted is the provision for freedom to propagate religion. This right which has been claimed by some has been the bane of our political life in this country. Probably it might have been thought proper to include it in the old set-up of things. In a secular State, such a provision, especially with the guarantee for the free exercise of religion and freedom of thought, is out of place in our Constitution and I submit to this House that that provision should be omitted.

Then there is the question of the redistribution of provinces. I am not one of those who see something red in this question. If the linguistic provinces have been bastions of strength in our fight for freedom, I do not understand how they can be damned as showing fissiparous tendency when we ask for linguistic provinces. In fact, every citizen should feel that he has got freedom. I feel that the language of the Parliament of the particular region should be the language of that area. In fact there is no place for multilingual provinces like Bombay and Madras.

The provinces should be distributed on a linguistic basis. We are not going to break our heads over this question. It can be settled amicably by mutu understanding and co-operation.

Similarly about language. The southern languages of India have borrowe freely from Sanskrit. We have got both Tatsama and Tadbhava words in our Dravidian languages. I feel that Hindi with the Devanagri script would be acceptable to us, but I think that it should not be forced on us all at once, especially the vast numbers of people inhabiting the Deccan peninsula. It should be gradually introduced. We are prepared to accept Hindi with the Devanagri script as the official language of India, but time should be given to us to pick

up Hindi. This Constitution should reflect the cumulative wisdom of every section of this House. If you want to take us with you, we must understand your arguments, we must understand your points of view and we must hammer out this Constitution and make it acceptable to all. So also, the sections of the people who have got the Urdu script should also be given time to pick up the Devanagri script as Begum Aizaz Rasul suggested.

One other point I would like to touch upon is regarding the provisions in Part VII for the states in Part II of the First Schedule, that is, Sections 212 to 214. I think they should not be made a permanent feature of the Constitution. In fact, the policy of the Government of India has been to make the States into viable units. Sections 212 to 214 with the various amendments suggested by the Drafting Committee will simply increase the number of these uneconomic small States in the country. Provision is made for Lieut. Governors, Council of Ministers and so on. If these are allowed to remain a permanent feature of the Constitution, I am afraid they will divide the country into smaller units and the Centre will be burdened with maintaining these uneconomic units. Within a short time these smaller units must be induced to merge with the larger provinces or States amidst which they are situated. Take for example the province of Coorg. It has an area of only 1,500 sq. miles and the population is about 160,000. I learn that ever since the Coorg budget was separated from the Central Budget, they have not been able to undertake any development project. They have not been able to repair a bridge which would cost only about Rs. 5,000.

Then about the capital of India, I agree with my Honourable friend from Mysore who stated that before vast sums of money are expended over the capital for the East Punjab and also the extension of Delhi, we should consider locating the capital in a more centrally situated place.

There may be some justification for Delhi to continue as a Centrally administered area because it is the capital, but there is absolutely no justification to increase these Centrally administered areas. In fact the Central Government will be functioning in two capacities, one as the Central Government and the other as a provincial government for the Centrally administered areas. I do not see any justification for the Centre spending large sums of money on these uneconomic units.

Both Mr. Ananthasayanam Ayyangar and Professor Ranga asked why there should be Constituent Assemblies for the States. I submit that this is none of our fault. As soon as we came here in July last, some of us Members representing the States tabled a resolution before this august Assembly that a committee be constituted to evolve a model constitution for the States. If the archives of the Steering Committee are searched, such a resolution will be found there, but unfortunately this Assembly did not take any steps and things so developed that we had to demand Constituent Assemblies in our States when we fought for responsible government in our States. I do not see any harm in this because no constitution drawn up by these Constituent Assemblies can be at variance with the Constitution that is going to be adopted by this House. They must fit in with the all India picture. So long as they do this, I do not see why they should not be allowed to finish their job.

Another suggestion was made that there should be uniform powers both for the States and the provinces. In this connection, I would like to submit, Sir, speaking on behalf of States like Travancore and Mysore, that we are far ahead of some provinces industrially, economically and financially. In bringing about uniformity between provinces and the States, I would submit to this House that there should be no levelling down. There should be only levelling up. Mysore has co-operated in all all-India matters and is still co-operating, and I am sure it will co-operate also in bringing about uniformity, provided there is onl

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levelling up and no levelling down. In fact, I am one of those who believe that there should be uniform powers both for the States and the provinces. I want the Supreme Court to be given appellate powers not only in constitutional matters but also in civil and criminal matters. I am glad that the Drafting Committee has made provision for this and I am sure that this provision will be taken advantage of by the States.

Another point I would like to touch upon is Section 258 as regards the financial powers of the President. Power is given to the President to terminate any agreement entered into between a State in Part III and the Union after a period of five years. I submit, Sir, that five years is too short a time. The clause itself says that such an agreement would be valid for a period of ten years. If such an agreement is terminated, after five years it may disturb the financial position of the State concerned. In fact, for long range planning, five years is too small a period. I submit that it may be altered with the consent of the State. If after the report of the Finance Commission the President feels that it is necessary to terminate such an agreement, he may do so in consultation with the State concerned. My point is it should not be one-sided, as this would work as a great financial handicap to the State concerned.

Then, Sir, as regards the power to amend the Constitution. I do not agree with my Honourable friend, Mr. Santhanam, that it should be rigid. It should be as flexible as possible because the integration of smaller units into bigger units is still going on and bringing about uniformity between the States and the provinces also is still going on. Perhaps it will take some time before there is some sort of uniformity between the various units of the Federation, and during the initial period it should be as easy as possible for the future Parliament to amend the Constitution to suit the circumstances of the time. The power to amend the Constitution should be made flexible, but even here a difference is made between the States and the provinces. I submit that this difference between the States and the provinces as regards the number of votes should be done away with. Equal rights should be given both to the States and the provinces so far as amendments to the Constitution are concerned.

With these words, I support the motion for the consideration of the Draft Constitution.

Shri N. Madhava Rau (Orissa States).—Mr. Vice-President, I had not intended to join in this discussion, but in the course of the debate, several remarks were made not only on the provisions of the Draft Constitution, but on the manner in which the Drafting Committee had done their work. There was criticism made on alleged faults of commission and omission of the Committee. Mr. Alladi Krishnaswami Iyer who spoke yesterday and Mr. Saadulla who will speak on behalf of the Committee a little later have cleared or will clear the misapprehensions on which this criticism is based. I felt that as a member of the Committee who participated in many of its meetings, after I had joined the Committee I should also contribute my share in removing these misapprehensions if they exist among any large section of the House.

It is true that the Draft Constitution does not provide for all matters, or in just the way, that we would individually have liked. Honourable Members have pointed out, for instance, that cow-slaughter is not prohibited according to the Constitution, Fundamental Rights are too profusely qualified, no reference is made to the Father of the Nation, the National Flag or the National Anthem. And two of our Honourable friends have rightly observed that there is no mention even of God in the Draft Constitution. We have all our favourite ideas; but however sound or precious they may be intrinsically in other contexts, they cannot be imported into the Constitution unless they are germane to its purpose and are accepted by the Constituent Assembly.

Several speakers have criticised the Draft on the ground that it bears no impress of Gandhian philosophy and that while borrowing some of its provisions from alien sources, including the Government of India Act, 1935, it has not woven into its fabric any of the elements of ancient Indian polity.

Would our friends with Gandhian ideas tell us whether they are prepared to follow those ideas to their logical conclusions by dispensing, for instance, with armed forces; by doing away with legislative bodies, whose work, we have been told on good authority, Gandhiji considered a waste of time; by scrapping our judicial system and substituting for it some simple and informal methods of administering justice; by insisting that no Government servant or public worker should receive a salary exceeding Rs. 500 per month or whatever was the limit finally fixed? I know some of the Congress leaders who sincerely believe that all this should and could be done. But we are speaking now of the Constitution as it was settled by the Constituent Assembly on the last occasion. Apart from the Objectives Resolution (which is otherwise known as India's Charter of Freedom) and the enunciation of Fundamental Rights, the decisions of the Assembly dealt, sometimes in detail and sometimes in outline, with questions relating to the composition and powers of the Legislature, the executive authority and the judiciary of the Union and of the provinces, the distribution of legislative powers and administrative relations between the Union and the units, finance and borrowing powers, the amendment of the Constitution and so on. Is there any instance in which a decision of the Assembly embodying Gandhian prineiples has not been faithfully reproduced in the Draft Constitution? If it is the contention of these critics that the decisions of the Assembly itself have fallen short or departed from those principles, that is of course another matter.

Then those of our friends who wanted indigenous ideas of polity to be embodied in the Constitution would have to admit that while (as has been pointed out by an honourable member today) there might have been republics in the northern India in the days of Alexander, by and large, kingship was an integral part of Indian polity. At a time when the institution of kingship is so unpopular, when even Indian rulers are barely tolerated although they have shed all power, when formal elections and ballot boxes unknown to our ancestors are regarded as the *sine quâ non and* authentic symbols of democracy, it would be unreal to pretend to seek guidance for our immediate task in the ancient political philosophy of India. A more pertinent point is this. Why did not the exponents of these fine ideas press them on the attention of the House at the proper time and secure their acceptance when the Constitution was more or less settled during the last session? Why do they not do so even now if they have any feasible suggestions to make? Why should they blame the Drafting Committee for not incorporating in the Draft what can only be described as belated second thoughts?

There is undoubtedly a feeling among some Congress circles and others that the National Government in the Centre and the people's Government in the provinces are both departing from the principles of Gandhiji, that they are carrying on the much the same bureaucratic way as their alien predecessors and that the promised Ramrajya is nowhere near being realised. In these circumstances, "back to Gandhi" has become a sort of militant slogan and a challenge to the authorities. It might or might not be right, but it has to be addressed to the proper quarter. To apply that slogan in the context of the very restricted task entrusted to the Drafting Committee seems to be entirely pointless. I am reminded of a couplet written about an archæologist of the name of Thomas Hearn. This is how it runs:

"Quoth Time to Thomas Hearn
What I forget you learn."

"You learn what I forget" seems to be rather naive advice.

Shri B. Das (Orissa: General): On a point of order, Sir, Members of this House asked the Drafting Committee to draft the Constitution and each of us is giving out our views now. It is no use for a member of the Drafting Committee to tell the House that we use slogans. I strongly protest against such language by a member of the Drafting Committee.

Mr. Vice-President: Mr. Das, you do not propose to curtail the liberty of expression allowable to a member of the Drafting Committee? You and I may not agree with him. Surely he is entitled to give out his views. Is it not?

Shri N. Madhava Rau: It is very unfortunate that a good deal of controversy arose in regard to village panchayats. Dr. Ambedkar's strong remarks on the subject were apparently based on his own experience. But, like Mr. Alladi Krishnaswami Ayyar, I wish to speak for myself in the light of my own experience. For over thirty years, the Mysore Government have put the revival of village communities and the improvement of the working of village panchayats in the forefront of their activities. A great deal of public expenditure has been incurred on this account. All officers concerned from the Dewan to the Tahsildar have, according to their lights, given personal attention to the condition of the villages. The present popular Government in Mysore, are, I understand, making still more intensified efforts in the same direction. The results are, in my opinion encouraging and in some cases, quite gratifying. It is true some villages are chronically faction-ridden and indulge in petty tyrannies, or remain the strongholds of untouchability. A considerable number are apathetic or even moribund. But, about thirty per cent could be classed as good; that is to say, they had held regular meetings, collected panchayat taxes, undertaken some optional duties and carried out works of public utility and weekly cleaning by voluntary labour contributed by the villagers and had taken steps to ensure the vaccination of children and so on. The success that has been achieved such as it is, is largely conditioned by the initiative of a good headman or other influential land-lord. I am sure that experience in other parts of the country is more or less the same. In certain small Indian States, where the bureaucratic system of administration had not penetrated, I found remarkable self-help and organised effort in the villages. With sustained effort on the part of the provincial and State Governments, the resuscitation of village communities may well be hoped for. As the Members of the Assembly are aware, Gandhiji was very particular about constructive work in the villages. This is what he said on one occasion. "If the majority of congressmen were derived from our villages, they should be able to make our villages models of cleanliness in every sense. But they have never considered it their duty to identify themselves with the villagers in their daily lives." There is nothing in the Draft Constitution to prevent provincial Governments from developing the village panchayats system as vigorously and as rapidly as they are capable of doing. The only point which has now come into prominence is whether the electoral scheme for the legislatures should be founded on these panchayats. If the House comes to the decision that this should be done, two Articles in the Draft Constitution have to be slightly amended. But, before taking such a step, the Assembly will have very carefully to consider whether by throwing the village panchayats into the whirlpool of party politics, you will not be destroying once for all their usefulness as agencies of village administration.

In curious contrast with those Members who found fault with the Drafting Committee for not presenting to them a Constitution according to their own ideas, although they had not been approved by the Assembly, there were others who criticised the Committee for having exceeded its instructions. This is an aspect of the matter which will be dealt with by the next speaker. I have only to say, in view of the criticism of Mr. B. Das, that by accepting member-

ship of the Drafting Committee, Members have not given up their freedom to express their views either from the committee room or the floor of this House.

The Draft Constitution is nothing more than a detailed agenda for this session, it is to serve as the basic working paper so to speak. There are other papers too, such as the Report of the Expert Committee on Finance and the Report of the Committee on Centrally Administered Areas. This is not the only paper before the House. If the Draft Constitution is viewed in this light, I am sure Members will appreciate that the charge that the Committee has, in any way exceeded its instructions is unfounded.

One of the honourable Members observed that this Constitution if adopted would become a fruitful source of litigation. So long as the Constitution is of a federal type, the possibilities of litigation cannot be excluded. It is all the more necessary, therefore, that all Articles and Clauses are closely scrutinised to ensure that litigation and consequent uncertainties of administration are minimised if they cannot be avoided.

Sir, there are one or two points which I should like to refer to in this connection. One is this: when any federal constitution is in the process of making, there are always two opposing sets of views, namely, the views of those who want to make the Centre strong, and the views of those who would plead for the utmost extent of State autonomy. The provisions of the Draft Constitution are necessarily a compromise, tentatively suggested, of these opposing views. My own feeling is that the scales have been tilted a little towards the Centre. If this feeling is shared by any large section of the House, it should be possible to adjust the balance in the direction desired. The second point, Sir, is that the provisions relating to the accession of States are meagre. There have been so many different kinds of mergers of late and the final pattern, so far as we know, has not yet emerged. The exact procedure by which the States will accede to the Union has to be determined at an early date so that the names of the acceding States may be mentioned in the appropriate Schedule and other relevant parts of the Constitution finalised.

There is a good deal of wisdom in the saying; "For forms of Government let others contest; whatever is best governed is best." However, things being what they are, unfortunately, we have to have some sort of written constitution and it has inevitably, to be a lawyer's constitution. If it is possible for any honourable Members to animate the Draft Constitution by a Promethean breath of ancient political wisdom or exalted patriotic sentiment many of us in this House would surely welcome such an effort.

Shri Biswanath Das (Orissa: General): Sir, May I have a word of elucidation from my honourable Friend, as to why the honourable Members of the Committee modified even decisions arrived at by the Constituent Assembly as also by Committees?

Shri N. Madhava Rau: I think if a specific instance is given, the next speaker will explain.

Shri T. Prakasam (Madras: General): The Honourable Mr. Madhava Rau said that the ballot box and ballot paper were not known to our ancestors. I would like to point out to him, Sir, that the ballot box and the ballot papers were described in an inscription on the walls of a temple in the villages of Uttaramerur, twenty miles from Conjeevaram. Every detail is given there. The ballot box was a pot with the mouth tied and placed on the ground with a hole made at the bottom and the ballot paper was the kadjan leaf and adult franchise was exercised. The election took place not only for that village but for the whole of India. This was just a thousand years ago. It is not known to my honourable Friend and that is why he made such a wrong statement—a grievously wrong statement and I want to correct it.

Syed Muhammad Saadulla (Assam: Muslim): Mr. Vice-President, Sir, I rise with some diffidence to sum up this debate and general discussions of the Draft Constitution for I was a member of the Drafting Committee. I do not mean to cover all the grounds that have been advanced during the last four days on the floor of the House but I will speak generally on the trend of the criticism and try to show by facts why the Drafting Committee took a certain line of action. Many honourable Members have been kind enough to give us a meed of appreciation for the tremendous trouble we took in the task of preparing the Draft Constitution. Certain honourable Members were not in a position to congratulate the Drafting Committee and I welcome that also. For it is well known that in the midst of sweet dishes something briny, something salty adds to the taste. I have listened very carefully during the last three days to the criticisms that have been advanced. My task has been greatly lightened by the intervention of my friends, colleagues in the Drafting Committee—I mean Sir Alladi Krishnaswamy Ayyar and Mr. Madhava Rau—in this debate. The criticisms that were levelled against our labours boil down really to three only, one that we have travelled far beyond our jurisdiction, secondly that we have flouted the opinions expressed by various committees by not accepting their recommendations, and thirdly, that we had made a discrimination between the provinces and the Indian States. Sir, if human memory is short, official memory is shorter still. The Drafting Committee is not self-existent. It was created by a Resolution of this House in August 1947, if I remember aright. I personally was lying seriously ill at the time and I could not attend that session. But, Sir, I find from the proceedings that as the Drafting Committee has been asked to frame the Constitution within the four corners of the Objective Resolution, we will be met with the criticisms which we have heard now. Wise men even in those days had anticipated this and to the official Resolution an amendment was moved by the learned Premier of Bombay, Mr. Kher, wherein we are given this direction. I will read from his speech. He moved an amendment to the original Resolution for Constituting this Drafting Committee and there he said—"That the Drafting Committee should be charged with the duties of scrutinising the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the Assembly for consideration the text of the draft Constitution as revised by the Committee". This was his amendment. In his speech he said:

"We have laid down a principle that all the action to be taken in the Provincial Constitution will be taken in the name of the Governor. There are a number of things which have to be put in in order to give effect to this decision which the Assembly has taken and which have been given a place in the Government of India Act. Then there are provisions which are ancillary in the other constitutions and some other provisions which must usually find a place in the Constitution. All these will have to be included in our draft even though they may not have been discussed or decided here upto now. We have taken decisions on almost all important points. Those will be given effect to but the draft will also contain things which are ancillary to these and also, all such things as are otherwise necessary."

That was the amendment which was accepted by the House. Sir, after this amendment of the Honourable Mr. Kher which was accepted by the House, it does not lie in the mouth of the Members of the Constituent Assembly to say that we have gone far beyond our jurisdiction.

Shri Biswanath Das: Sir, May I know whether this direction includes the accepting of Committee's reports, modification of such reports and rejection of important recommendations of such Committees?

Syed Muhammad Saadulla: I would request the Honourable Mr. Das, ex-Premier of Orissa, not to disturb me during the course of my speech. I

propose to meet his ground towards the end of my statement. I will also make the same request to other Honourable Members of the House, for otherwise I will lose the trend of my thought. I am not a seasoned orator like my friends here, and I speak from no notes. So I would appreciate their silence. If they want to ask me any questions, I will gladly reply to them if I can at the end of my speech.

The yard stick to measure the contents of the Draft Constitution is really the Objectives Resolution that was accepted by this House universally when it was moved by our learned Prime Minister. That Objectives Resolution contained only eight Articles, the last of which need not find a place in a Constitution. Let anyone here say that we have not conformed to the principles that are enunciated by that Objectives Resolution. We cannot say that those eight Articles form our Constitution: they gave us the barest skeleton. The Drafting Committee was charged with the duty of filling in the canvas and producing a complete picture of what the Constitution should be. At the time of moving that Objectives Resolution our popular Prime Minister said that this is an expression of our dream, this is the target of our aspirations and that it is nothing but a "Declaration". A declaration in such bold terms cannot form a Constitution. Therefore the Assembly, at the instance of Government—for the Resolution was moved by the then Chief Whip of the Government party—decided that the actual framing of the Constitution should be left in the hands of the Committee. I personally had no hand in my inclusion in that Committee. As a matter of fact, very strenuous attempts were made to oust me from the personnel of the Drafting Committee. I see from the proceedings that our stalwart friend Mr. Kamath raised a technical objection that I was not a Member of the Constituent Assembly at the time when my name was proposed. Probably he took that ground without knowing the facts. I was a Member of the Constituent Assembly from the very first. But he was correct that after the referendum in the districts of Sylhet, part of Sylhet was transferred to Eastern Pakistan, and the number of Members to be sent from Assam to the Constituent Assembly had to be reduced and there was a fresh election. But if I remember aright at this distance, we were electing Members of the Constituent Assembly, in the Provincial Legislative Assembly in August 1947, and, if I remember aright, I was again elected a Member at the time when Mr. Kamath had raised that technical objection.

Shri H. V. Kamath: On a point of personal explanation, Sir. My point was that my Honourable friend Mr. Saadulla had not taken his seat in the Assembly; he had not taken the oath nor signed the Register, and therefore he was not a Member of the Assembly technically.

Syed Muhammad Saadulla: Sir, in spite of my request Mr. Kamath has chosen to interrupt me.

Shri M. Thirumala Rao: May I know how all this is relevant to the subject under discussion?

Mr. Vice-President: Let us proceed with the subject.

Syed Muhammad Saadulla: Sir, what I was driving at was that these people of the Drafting Committee were really elected by the unanimous vote of the Constituent Assembly, and it does not lie in the mouth of anyone now to say that they are not competent, that they did not belong to a certain party, and that barring one none of the Members had the hall-mark of jail delivery. How can I tell Honourable Members that we toiled and moiled that we did our best, that we ransacked all the known Constitutions, ancient and recent from three different continents, to produce a Draft which has been termed to be nothing but patch-work? But those who are men of art, those who love crafts, know perfectly well that even by patch-work, beautiful patterns, very lovable designs can be created. I may claim that in spite of the deficiencies

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in our Draft we have tried to bring a complete picture, to give this Honourable House a document as full as possible which may form the basis of discussion in this House. The Drafting Committee never claimed this to be the last word on the Constitution, that its provisions are infallible or that these Articles cannot be changed. The very fact that this Draft has been placed before this august House for final acceptance shows that we are not committed to one policy or the other. Where we had differed from the recommendations of Committees, or where we had the temerity to change a word here or a word there from the accepted principles of this august House, we have given sufficient indication in foot-notes, so that nothing can be put in surreptitiously there. The attention of the House has been drawn so that their ideas may be focussed on those items in which the Drafting Committee thought that they should deviate from the principles already accepted or from the recommendations of the Committees.

As regards the Committees, we were in a difficult position. Some Committees' recommendations were placed before the House and there they were discussed and a decision was taken, but reports of certain other Committees—notably the Financial Experts Committee or the Centrally Administered Areas Committee—were not placed before the House. They could not be discussed by the Honourable Members and no decision could be arrived at. We have taken liberty in the Drafting Committee to put our own view on some matters. If we have done it, we have done it with the best of intentions. As regards two other matters, I will elaborate a little later, but please for God's sake, do not go with the uncharitable idea that the Drafting Committee were not amenable to the vote of this House.

The main point of criticism, at least in regard to those two Committees, is firstly that the Drafting Committee did not give any consideration to the recommendation of the *ad hoc* Committee on the Centrally Administered Areas. We had very able exponents from those areas—Delhi and Ajmer-Merwara. We listened with the greatest respect, but we have heard the criticism on the very floor of this House that India should not multiply very small localities and convert them into units of the Union. We had the recommendations of this *ad hoc* Committee before us but we were perplexed what to do with them. Take Delhi, for example. It has got a population of 20 lakhs. If it is converted into a separate unit—and it cannot but be separated into a distinct unit, call it Lieutenant Governor's province or put it under the Centre—in that case, what are we to do with the other localities which are now centrally administered, Ajmer-Merwara, for instance? According to 1941 census figures, Ajmer-Merwara had only 6 lakhs population, but Mr. Mukut Bihari Bhargava was good enough to tell me now that the population has increased to 9 lakhs. Let us put the present population at 10 lakhs. In that case, if we give a separate Lieutenant Governor's province to Delhi, how can we refuse it to Ajmer-Merwara? Then what about Coorg? It is another centrally administered locality with a population of less than 2 lakhs. Then again there is the Andaman islands which also boasts of a Chief Commissioner. Therefore, we thought it best that this matter should be left to be decided by the bigger body—the Constituent Assembly. Were we wrong in adopting this course? We drew specific attention of this august Assembly to this in Part VII of the Draft Constitution. In the foot-note there you will find that we have said:

"The Committee is of opinion that it is not necessary to make any detailed provisions with regard to the constitution of the States specified in part II of the First Schedule which are at present Chief Commissioner's provinces on the lines suggested by the *ad hoc* Committee on Chief Commissioner's provinces in their recommendations. The revised provisions proposed in this part would enable the recommendations of the *ad hoc* Committee, if adopted by the Constituent Assembly, to be given effect to by the President by order."

If we wanted to neglect these areas, if we wanted to give a cold shoulder to their aspirations, we would not have said that it is up to the Constituent Assembly whether they should give them a constitution on the lines recommended by the *ad hoc* Committee.

I now come to the greater charge—of practically refusing to accept the recommendations of the Experts Finance Committee. I can quite appreciate—nay, sympathize—with all those members from East Punjab, West Bengal, Orissa and Assam who have criticised this part of our recommendations. But I would leave it to the decision of this august House to judge whether the provisions that we have made are not far better ultimately than the recommendations made by the Expert Finance Committee. I was surprised to hear one particular criticism from an Honourable Member from Madras that we were either careless in going through those recommendations or we were incompetent to appreciate the principles underlying them. To both of these accusations I register an emphatic "No". On the other hand, we gave the closest attention to the recommendations of the Expert Committee. I will show from their report as well as by figures that if the recommendations of that Committee had been accepted, the provinces will stand to lose, especially the poorer provinces like Assam, Orissa and Bihar. Again, it is not correct to say that the Drafting Committee has not accepted the majority of the recommendations of the Expert Finance Committee. I have that Committee's report in my hands and anybody who has it in his hands will find that on page 41, Appendix VI, the Committee recommended certain amendments in the Draft Constitution. I am glad to say that 95 per cent of those amendments have been accepted by the Drafting Committee and will be found in our provisions. What we did not accept is the figures that the Expert Finance Committee suggested that we should include in our recommendations.

Now, to turn to specific points, first I take the recommendation of the Expert Committee regarding the share in the jute export duty which is now available to the jute-growing provinces of India. This subject is very vital for the Republic of India. Jute, as is known, is the world monopoly of these four provinces only. I am glad to see from Press reports that attempts are being made to grow jute in Madras, but taking the position as it is, the undivided Bengal used to produce 85 per cent of the world's jute, Bihar 7 per cent, Assam 6 per cent and Orissa 2 per cent but these proportions have been changed by the partition of Bengal into East and West Bengal.

East Bengal used to produce 75 per cent of the total jute produced in Bengal. Therefore the present West Bengal produces only 10 per cent or 12 per cent of world jute. This position has changed the percentages of Assam, Bihar and Orissa. Yet, what do we find in the recommendations of the Financial Experts' report? Their recommendation is that the share—which under the Government of India Act of 1935, is 62½ per cent of the proceeds of the jute export duty which was given to the four provinces—should be stopped. No money should be given on this account to the provinces. But they realised that the poor provinces will be hard hit and therefore recommended that for ten years, the contribution should be made by the Government of India *ex-gratia* and in the following proportion:—

West Bengal—one crore,
Assam—fifteen lakhs,
Bihar—seventeen lakhs and
Orissa—three lakhs.

Now, I request this Honourable House to consider seriously whether this distribution is just or equitable for a province like Assam or a province like Orissa or Bihar. Bihar has got its production ratio increased from 7 per cent

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to very nearly 35 per cent of the jute grown in India now. Similarly the percentage for Assam has gone up to 30 per cent and proportionately for Orissa. Yet, the Financial Expert Committee wants to perpetuate the injustice that was done during the bureaucratic days and divide the proceeds in the same fashion, giving West Bengal which produces only 10 or 12 per cent of the total jute production as much as one crore.

One argument advanced by the Committee is that jute may be grown in the other provinces, but the mills converting the jute into finished products are situated in Bengal. It is perfectly correct that the export duty is levied not only on raw jute but also on the finished product. But consider the effect. West Bengal cannot increase its acreage. There, all the available waste lands are being requisitioned for refugees from East Pakistan. If any province can increase jute production it is Assam and Orissa. But if we do not get any return, if the share in the jute export duty is stopped, what is the incentive for Assam to increase the jute acreage? Jute is vital for India in the sense that all the jute produced in West Bengal is sold either to the continent of Europe or America by means of which we get the much-needed sterling or dollar exchange. If tomorrow the provinces of Assam and Orissa cease to produce jute, the jute mills in Bengal would not have anything to do and they will have to close down. It is on this account that the Drafting Committee thought that we should not accept those recommendations of the Expert Committee and let the status quo run.

The next recommendation of the Expert Finance Committee is that, in order to make up the loss which these provinces will suffer by the stoppage in the share of jute export duty, the Government of India which now shares on a 50-50 basis the income-tax from the provinces should increase the divisible pool of the provinces to 60 per cent or an increase of 10 per cent. Sir, most Honourable Members here do not know how unjustly and iniquitously this provision of division of income-tax has fallen on the poor provinces of Bihar and Assam. Bihar produces the raw material; Bihar has the gigantic steel works and offices, but their head offices are all in Bombay and hence the income-tax is paid in Bombay. Bihar therefore does not get any credit for this income-tax. Bihar has been crying hoarse to get this changed, but has been unsuccessful so far. In Assam, the condition is worse. Before Partition, Assam had some 1,200 tea gardens Even after the removal of a large part of Sylhet to East Pakistan, Assam has got a thousand tea gardens. That is the only organised industry of Assam. But out of those 1,000 tea estates, the head offices or the offices of the managing agents of as many as 800 are in Calcutta or London. Up till now, Assam has been making insistent prayers to the Central Government from the time this system was introduced to change the system. The division under this system is on the basis of collection and not of origin.

Now, do you think, Sir, that if we accept this provision of the Finance Committee, justice would be meted out to Bihar and to Assam? We wanted revision of the entire system and the Finance Committee was compelled to accept the force of our arguments. But they tried to compromise and their compromises are put down in Section 55 of their recommendation.

They say: "We recommend that the provincial share, that is 60 per cent of the net proceeds, be distributed among the provinces as follows:—

20 per cent on the basis of population,

35 per cent on the basis of collection, and

5 per cent in the manner indicated in paragraph 56."

Paragraph 56 says: "The third block of 5 per cent should be utilised by the apportioning authority as a balancing factor in order to modify any hardship

that may arise in the case of particular provinces as a result of the application of the other two criteria."

Sir, of the present provinces, after the merger of the native States with Orissa, Assam is the least populated provinces in India. We had a population according to the 1941 census of 102 lakhs, but now the population has dwindled to 72 lakhs. The population of Orissa has increased. Therefore if twenty per cent of the divisible pool of income-tax is divided on population basis, we get very little. Rather, Assam would get a reduced sum.

Then they say that 35 per cent should be distributed on the basis of collection. This way both Assam and Bihar will suffer, because the place of collection in the case of Assam is Calcutta and for Bihar, Bombay and naturally the major portion of the 60 per cent will go away from the provinces concerned. Only a little 5 per cent. is left to mitigate any hardships that may arise in the case of particular provinces. Ours has been a cry in the wilderness; our voices are never heard at the Centre. However hoarse we may cry and however much our Premier may try, we do not get a hearing. Therefore, the Drafting Committee thought that it is not in the interests of the poorer provinces to accept this recommendation of the Expert Committee.

Again, the Committee has stated that the excise duty on tobacco should be divided amongst the provinces on the basis of estimated consumption. That would not help either Assam or Orissa for want of numbers. Although the Expert Committee made a reference about this in their main recommendations, they omitted this from the list of amendments which they have put down in Appendix VI. Therefore when they themselves have not recommended this, no blame can be attached to the Drafting Committee if they have not adopted it.

Lastly, Sir, the Expert Committee recommended that there should be a Finance Commission appointed immediately to go into the finances of the provinces and the Centre. We have not accepted that it should be appointed immediately because we felt that the appointment of such a Commission at this juncture would be fair neither to the provinces nor to the Central Government. Moreover, they will have nothing to go by. The Expert Committee themselves have stated:

"In this country the lack of sufficient economic and financial statistics and other similar data is a great handicap. Therefore, the allocation of resources has to be made largely on the basis of a broad judgment, at any rate until the necessary data become available. We attach great importance to the collection of these statistics and to connected research, and trust that the Government will make the necessary arrangements without delay . . . . "

An Honourable Member: For how long does the Honourable Member propose to continue? Is there no time limit for him?

Syed Muhammad Saadulla: I am finishing in a few minutes, if my friends will allow me.

Mr. Vice-President: I think he is entitled to as much time as he wants in order to answer the various criticisms that have been levelled against the Drafting Committee. Surely you should give him time to do it.

Syed Muhammad Saadulla: We find that even on the recommendation of the Expert Committee, there are no data available at the present moment. From the figures which they have published at page 27 of the brochure, we find that the Central Government's budget has been a deficit one continuously since 1937-38. According to the revised estimate for 1946-47, their deficit is a small one of about 45 lakhs, but I am sure, Sir, that when the final figures are published, the deficit will increase. That is the reason why, I presume, the Central Government without consulting the provinces concerned, by a stroke of the pen, have reduced the share of the Jute Export Duty to these four provinces from 62½ per cent. to 20 per cent. They would not have taken this extraordinary step if they were not hard-pressed for finance.

The Honourable Shri K. Santhanam (Madras: General): On a point of order, Sir, the Drafting Committee, I suggest, have nothing to do with the Government of India's financial administration. I think the Honourable Member should confine his remarks to the Constitution itself.

Syed Muhammad Saadulla: But, Sir, the Drafting Committee has been charged with neglect in this matter.

For the past ten years the Government of India themselves are having deficit budgets, and now they are incurring very huge expenditure on the rehabilitation of refugees, the war in Kashmir and the police action in Hyderabad. On account of these, they are not in a position to give sufficient help to the provinces, whereas the provinces are crying hoarse over the financial neglect from the Centre. Sir, I will just address one point about the particular position of Assam, as Assam's position is not appreciated by most Members of the House. It is not merely a frontier province of the Republic of India but it is a bulwark against aggression from the East. (Interruption).

Sir, if you do not allow me to speak I am subjecting myself to your Ruling. But I wish to say a few words as a Member coming from Assam.

Mr. Vice-President: You are speaking as a Member of the Drafting Committee.

The Honourable Shri B. G. Kher (Bombay: General): May I suggest that he may continue this subject tomorrow, so that we may have more time?

Syed Muhammad Saadulla: I bow to your ruling, Sir, I thought that I have my three functions before this House, as a member of the Drafting Committee, also as a member from the neglected and benighted province of Assam and also as coming from the Muslims. I wanted to speak just two things about Assam and the Muslims, but I will reserve it for a future occasion.

Mr. Vice-President: I understand that Mr. Kamath had some kind of amendment. Is the Honourable Member pressing it?

Shri H. V. Kamath: I am not pressing it, as it is purely of a verbal nature.

Mr. Vice-President: The question is:

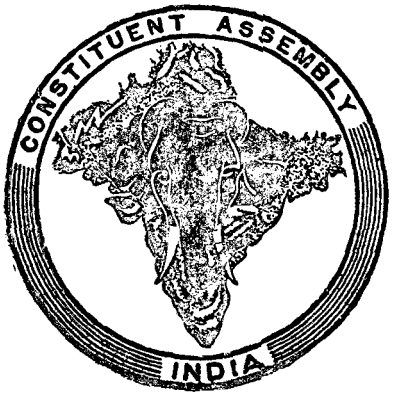
"That the Constituent Assembly do proceed to take into consideration the Draft Constitution of India settled by the Drafting Committee appointed in pursuance of the resolution of the Assembly dated the 29th day of August, 1947."

The motion was adopted.

Mr. Vice-President: I have to say something about our future programme of work. Naturally we shall get two days, tomorrow and the day after, for submitting amendments. I understand that a Member had written a letter to our President, asking for ten days' time. It is impossible to grant this extension of time without seriously jeopardizing the existing programme which we have set ourselves to fulfil. So the last date will be Thursday and the time 5 P.M. on the 11th.

I further understand that already three thousand amendments have been received and I am quite certain that within the next two days further amendments will come in. I take my courage in my hands and make a suggestion for the consideration of the House. It is this: that instead of trying to go through the amendments one by one on the floor of the House, it would be much better for those who have suggested these amendments to meet the Drafting Committee as a whole or certain members of the Drafting Committee and to discuss matters. In this way it is possible to expedite the work. It is for you to reject it at once without listening to my suggestion or to come to some sort of understanding. It may be that the Drafting Committee may

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15th November
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OFFICIAL REPORT

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Price 5 annas

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 15th November, 1948

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:

1. **Shri P. S. Nataraja Pillai** (Travancore).

DRAFT CONSTITUTION—(*Contd.*)

Mr. Vice-President (Dr. H. C. Mookherjee): Maulana Hasrat Mohani.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I beg to state that on the 6th November, I have notice of an amendment to this effect:

"That the consideration of the Draft Constitution clause by clause be postponed till after it has been finally decided which of the following three sets of words are to be incorporated in the Preamble of the same—

Sovereign Independent Republic,

Sovereign Democratic Republic,

Sovereign Democratic State."

It has not yet been decided which of these three sets is to be incorporated in the Constitution, and yet I understand that the Congress Party has decided to consider this Constitution, clause by clause, without deciding the most important question of what words should be there—Republic or State, in the Preamble.

I have a complaint to make. All the amendments of which notice was given to your office have been printed, but my amendment has been left out. May I know the reason why this has been left out?

Mr. Vice-President: I understand that this has come about at as a result of the form of procedure, and the amendment is out of order. I am fortified in my decision by what I am told is the procedure adopted in the House of Commons where the Preamble comes last of all.

Maulana Hasrat Mohani: May I point out one thing, Sir? On a previous occasion, when the same thing was done by me, it was decided by the President of the Constituent Assembly, and he has definitely given a ruling that my amendment to this very effect which I have proposed today, was in order. He has definitely said so. I may read out his very words which have been printed in the official report—

"I think the amendment is in order. It is open to the House to throw it out."

So I have every right to propose my amendment. Of course, it is open to the House to accept it or reject it. So I say this thing has been settled by the President. If you like you may ask the President if it is a correct ruling or not.

Again, when the Union Constitution was presented before this House in July, on that occasion also, I raised objection to this very effect, and then also the President of the Constituent Assembly definitely said that my amendment cannot be ruled out of order. If you like, I may read out his exact words:

"I actually give a promise that whenever you move an amendment to that effect, it will not be ruled out of order."

[Maulana Hasrat Mohani.]

So I request you not to rule me out of order, as it has been finally decided by the President that my amendment should be allowed. Of course, it is open to the House to accept or reject it, as on a previous occasion, when the Union Constitution was proposed by Pandit Nehru. It is very unfortunate that instead of Pandit Nehru, we have today Dr. Ambedkar. I think he has reversed the whole order of the business. I submit I have got every right to request you to protect my rights and allow me an opportunity to give my reasons for what I say. Of course, if the House is not willing to accept my amendment, the House can throw it out, as it did on a previous occasion. But I think I must not be discouraged in this way. My right to move any amendment must be protected.

Mr. Vice-President : I make a distinction between the time when the Preamble is to be considered and your right to move an amendment. When the time comes, you have, of course, every right to move your amendment. My ruling is that the Preamble is not to be taken up first of all. That is final.

Now we propose to take up the discussion of the Draft Constitution, clause by clause.

Shri Algurai Shastri (United Provinces: General): *[Mr. President, before you take up the consideration of this constitution. I want to draw your attention to an important matter. Have I your permission to do so?]

Mr. Vice-President : Please come to the mike.

Shri Algu Rai Shastri : *[Mr. President, I want to submit that two or three days back a report appeared in the papers that many Hindu members of the Sind Assembly had been unseated because a large number of Sindhis had left Sind and had come over to India. Those people who have come to India appear to be fourteen lakhs in number and therefore it appears to be necessary that these Sindhi brothers, who were compelled to leave their place and have come here leaving behind their homes and hearths, should find some representation in this Assembly. We are going to frame a constitution for the whole of India. In framing that constitution it is necessary that these brothers, who have been compelled to leave their homes, should find some representation. I want that some such arrangement may be made as may enable those people who have come here from Sind to get representation in this House. If you permit us, we shall move a regular resolution to that effect so that those people may be represented in this House.]

Mr. Vice-President : This question cannot be taken up here.

It seems that I made a mistake in the procedure to be adopted. What I have to say now is that Article 1 should stand as part of the Constitution.

I understand that there is something to be said on this matter by our friend Mr. Ayyangar. As regards the amendments, he has certain proposals to make.

ARTICLE 1.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, I submit that amendments Nos. 83 to 96, both inclusive, may kindly be allowed to stand over. They relate to the alternative names, or rather the substitution of names—BHARAT, BHARAT VARSHA, HINDUSTAN—for the word INDIA, in Article I, clause (1).

It requires some consideration. Through you I am requesting the Assembly to kindly pass over these items and allow these amendments to stand over for some time. A few days later when we come to the Preamble these amendments might be then taken up. I am referring to amendments Nos. 83 to 96, both inclusive, and also amendment No. 97 which reads:

* [ ] Translation of Hindustani Speech.

"That in clause (1) of article 1, for the word 'India' the word 'Bharat (India)' and for the word 'States' the word 'Provinces' be substituted."

So I would like all these to stand over.

Mr. Vice-President: Is that agreed to by the House?

Honourable Members: Yes.

Shri Lokanath Misra (Orissa : General) : Of course I would have no objection, Sir, if you defer consideration of these amendments for two or three days, but I beg to bring to your notice that amendment No. 85, which stands in my name, does not only mean to change the name of India into 'Bharatavarsha', but it means something more, and I am afraid if you hold over this amendment those things would be inappropriate at a later stage. I am submitting that I may be allowed to move this amendment, of course without committing myself to the change of the name of India to 'Bharatavarsha' or otherwise. Though I am not insisting on the change of name just now, I ask that I may be allowed to move the other part of my amendment.

Shri M. Ananthasayanam Ayyangar : My request was that amendments relating only to the name may stand over and in his case on the understanding that the word 'India' be changed to some other name, he may move his amendment. I am not asking that the other portion of this amendment may not be moved.

Mr. Vice-President: So the Honourable Member may take the opportunity of moving the second part of his amendment at the proper place.

Now we shall go to the amendments. Amendment No. 98 stands in the name of Professor K. T. Shah.

Prof. K. T. Shah (Bihar : General) : Sir, I beg to move :

"That in clause (1) of article 1, after the words 'shall be a' the words 'Secular, Federal Socialist' be inserted,"

and the amended article or clause will read as follows :

"India shall be a Secular, Federal, Socialist Union of States."

In submitting this motion to the House I want first of all to point out that owing to the arrangements by which the Preamble is not considered at this moment, it is a little difficult for those who would like to embody their hopes and aspirations in the Constitution to give expression to them by making amendments of specific clauses which necessarily are restricted in the legal technique as we all know. Had it been possible to consider the governing ideals, so to say, which are embodied in this Preamble to the Draft Constitution, it might have been easier to consider these proposals not only on their own merits, but also as following from such ideals embodied in the preamble as may have been accepted.

As it is, in suggesting this amendment, I am anxious to point out that this is not only a statement of fact as it exists, but also embodies an aspiration which it is hoped will be soon realized. The amendment tries to add three words to the description of our State or Union: that is to say, the new Union shall be a Federal, Secular, Socialist Union of States. The Draft Constitution, may I add in passing, has rendered our task very difficult by omitting a section on definitions, so that terms like "States" are used in a variety of meanings from Article to Article, and therefore it is not always easy to distinguish between the various senses in which, and sometimes conflicting senses in which one and the same term is used. I take it, however, that in the present context the word "Union" stands for the composite aggregate of States, a new State by itself, which has to be according to my amendment a Federal, Secular, Socialist State.

[Prof. K. T. Shah]

I take first the word 'Federal'. This word implies that this is a Union which however is not a Unitary State, inasmuch as the component or constituent parts, also described as States in the Draft Constitution, are equally parts and members of the Union, which have definite rights, definite powers and functions, not necessarily overlapping, often however concurrent with the powers and functions assigned to the Union or to the Federal Government. Accordingly it is necessary in my opinion to guard against any misapprehension or misdescription hereafter of this new State, the Union, which we shall describe as the Union of India.

Lest the term 'Union' should lead anyone to imagine that it is a unitary Government I should like to make it clear, in the very first article, the first clause of that article, that it is a 'federal union'. By its very nature the term 'federal' implies an agreed association on equal terms of the states forming parts of the Federation. It would be no federation, I submit, there would be no real equality of status, if there is discrimination or differentiation between one member and another and the Union will not be strengthened, I venture to submit, in proportion as there are members States which are weaker in comparison to other States. If some members are less powerful than others, the strength of the Union, I venture to submit, will depend not upon the strongest member of it, but be limited by the weakest member. There will therefore have to be equality of status, powers and functions as between the several members, which I wish to ensure by this amendment by adding the word 'Federal'.

So far as I remember, this word does not occur anywhere in the constitution to describe this new State of India as a Federation and this seems to me the best place to add this word, so as to leave no room for mistake or misunderstanding hereafter.

Next, as regards the Secular character of the State, we have been told time and again from every platform, that ours is a secular State. If that is true, if that holds good, I do not see why the term could not be added or inserted in the constitution itself, once again, to guard against any possibility of misunderstanding or misapprehension. The term 'secular', I agree, does not find place necessarily in constitutions on which ours seems to have been modelled. But every constitution is framed in the background of the people concerned. The mere fact, therefore, that such description is not formally or specifically adopted to distinguish one state from another, or to emphasise the character of our state is no reason, in my opinion, why we should not insert now at this hour, when we are making our constitution, this very clear and emphatic description of that State.

The secularity of the state must be stressed in view not only of the unhappy experiences we had last year and in the years before and the excesses to which, in the name of religion, communalism or sectarianism can go, but I intend also to emphasise by this description the character and nature of the state which we are constituting today, which would ensure to all its peoples, all its citizens that in all matters relating to the governance of the country and dealings between man and man and dealings between citizen and Government the consideration that will actuate will be the objective realities of the situation, the material factors that condition our being, our living and our acting. For that purpose and in that connection no extraneous considerations or authority will be allowed to interfere, so that the relations between man and man, the relation of the citizen to the state, the relations of the states *inter se* may not be influenced by those other considerations which will result in injustice or inequality as between the several citizens that constitute the people of India.

And last is the term "socialist". I am fully aware that it would not be quite a correct description of the state today in India to call it a Socialist Union. I am afraid it is anything but Socialist so far. But I do not see any reason why we should not insert here an aspiration, which I trust many in this House share with me, that if not today, soon hereafter, the character and composition of the State will change, change so radically, so satisfactorily and effectively that the country would become a truly Socialist Union of States.

The term 'socialist' is, I know, frightening to a number of people, who do not examine its implications, or would not understand the meaning of the term and all that it stands for. They merely consider the term 'socialist' as synonimous with abuse, if one were using some such term, and therefore by the very sound, by the very name of it they get frightened and are prepared to oppose it. I know that a person who advocates socialism, or who is a declared or professed socialist is to them taboo, and therefore not even worth a moment's consideration. . . . . .

Seth Govind Das (C.P. & Berar: General): It is absolutely wrong.

Prof. K. T. Shah: Thank you. If the assurance given by some friends is correct, I hope the House would have no objection to accept this amendment. I trust that those friends here who are very loud in this assertion will induce others in the House to set aside party barriers, and support me in this promising description, this encouraging epithet of the State.

By the term 'socialist' I may assure my friends here that what is implied or conveyed by this amendment is a state in which equal justice and equal opportunity for everybody is assured, in which every one is expected to contribute by his labour, by his intelligence, and by his work all that he can to the maximum capacity, and every one would be assured of getting all that he needs and all that he wants for maintaining a decent civilised standard of existence.

I am sure this can be achieved without any violation of peaceful and orderly progress. I am sure that there is no need to fear in the implications of this term the possibility of a violent revolution resulting in the disestablishment of vested interests. Those who recognise the essential justice in this term, those who think with me that socialism is not only the coming order of the day, but is the only order in which justice between man and man can be assured, is the only order in which privileges of class exclusiveness property for exploiting elements can be dispensed with must support me in this amendment. It is the only order in which, man would be restored to his natural right and enjoy equal opportunities and his life no longer regulated by artificial barriers, customs, conventions, laws and decrees that man has imposed on himself and his fellows in defence of vested interests. If this ideal is accepted I do not see that there is anything objectionable in inserting this epithet or designation or description in this article, and calling our Union a Socialist Union of States.

I have one more word to add. As I said at the very beginning this is not merely an addition or amendment to correct legal technicality, or make a factual change, but an aspiration and also a description of present facts. There are the words "shall be" in the draft itself. I therefore take my stand on the term "shall be", and read in them a promise and hope which I wish to amplify and definitise. I trust the majority, if not all the members of this House, will share with me.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-President, Sir, I regret that I cannot accept the amendment of Prof. K. T. Shah. My objections, stated briefly, are two. In the first place the Constitution, as I stated in my opening speech in support of the motion I

[The Honourable Dr. B. R. Ambedkar]

made before the House, is merely a mechanism for the purpose of regulating the work of the various organs of the State. It is not a mechanism whereby particular members or particular parties are installed in office. What should be the policy of the State, how the Society should be organised in its social and economic side are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether. If you state in the Constitution that the social organisation of the State shall take a particular form, you are, in my judgment, taking away the liberty of the people to decide what should be the social organisation in which they wish to live. It is perfectly possible today, for the majority people to hold that the socialist organisation of society is better than the capitalist organisation of society. But it would be perfectly possible for thinking people to devise some other form of social organisation which might be better than the socialist organisation of today or of tomorrow. I do not see therefore why the Constitution should tie down the people to live in a particular form and not leave it to the people themselves to decide it for themselves. This is one reason why the amendment should be opposed.

The second reason is that the amendment is purely superfluous. My Honourable friend, Prof. Shah, does not seem to have taken into account the fact that apart from the Fundamental Rights, which we have embodied in the Constitution, we have also introduced other sections which deal with directive principles of state policy. If my honourable friend were to read the Articles contained in Part IV, he will find that both the Legislature as well as the Executive have been placed by this Constitution under certain definite obligations as to the form of their policy. Now, to read only Article 31, which deals with this matter : It says :

"The State shall, in particular, direct its policy towards securing—

(i) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(iv) that there is equal pay for equal work for both men and women; . . . ."

There are some other items more or less in the same strain. What I would like to ask Professor Shah is this: If these directive principles to which I have drawn attention are not socialistic in their direction and in their content, I fail to understand what more socialism can be.

Therefore my submission is that these socialist principles are already embodied in our Constitution and it is unnecessary to accept this amendment.

Shri H. V. Kamath (C. P. and Berar: General): Mr. Vice-President, the amendment moved by my honourable friend, Prof. K. T. Shah is, I submit somewhat out of place. As regards the words 'secular and socialist' suggested by him I personally think that they should find a place, if at all, only in the Preamble. If you refer to the title of this Part, it says, 'Union and its Territory and jurisdiction'. Therefore this Part deals with Territory and the jurisdiction of the Union and not with what is going to be the character of the future Constitutional structure.

As regards the word 'Union' if Prof. Shah had referred to the foot-note on page 2 of the draft Constitution, he would have found that "The Committee considers that, following the language of the Preamble to the British North America Act, 1867, it would not be inappropriate to describe India as a Union although its Constitution may be federal in structure". I have the Constitution of British North American before me. Therein it is said:

"Whereas the provinces of Canada, Nova Scotia, have expressed a desire to be federally united", but subsequently the word "federal" is dropped, and only the word "Union" retained. Similarly, in our Constitution the emphasis should be on the word 'Union' rather than on the word 'Federal'. The tendency to disintegrate in our body politic has been rampant since the dawn of history and if this tendency is to be curbed the word 'federal' should be omitted from this Article.

You might remember, Sir that the content of Federation has been incorporated in the Constitution and we have various Lists prescribed for Union, etc. So long as the essence is there in the Constitution, I do not see any reason why the word 'Federal' should be specifically inserted here to quality the word 'Union'. I therefore oppose the amendment of Professor Shah.

Mr. Vice-President: The question is:

"That in claus (1) of Article 1 after the words 'shall be a' the words 'Secular, Federal, Socialist' be inserted."

The motion was negatived.

Mr. Vice-President: I want to make one thing clear. After the reply has been given by Dr. Ambedkar, I shall not permit any further discussion. I have made a mistake once. I am not going to repeat it. (*Laughter*).

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, I move:

"That in clause (1) of Article 1 for the word 'Union' the word 'Federation' be substituted."

You, Sir, will remember that when Dr. Ambedkar moved the motion for the consideration of this Draft Constitution, when he was dealing with the form of Government, he stated that.....

Mr. Vice-President: We do not want a discussion of this nature. I appeal to the Honourable Member to speak only if he has something new to say.

Mahboob Ali Baig Sahib Bahadur: Dr. Ambedkar stated, when dealing with the form of government, that there are two forms of government, one unitary and the other federal.

Shri K. Hanumanthaiya (Mysore): On a point of order, Sir. We have already voted down the amendment of Prof. K. T. Shah. It contained the word "Federation" and the House has already given its decision on that question. If the mover of the present amendment moves his amendment, the House would be reconsidering the same question. Therefore, in view of the fact that this amendment was already covered by the previous amendment and discussion and voting had taken place on it, I think he is out of order in moving this amendment. I hope the Chair will use its discretion in the matter so that we may do our work quickly.

Mr. Vice-President: I agree with you in thinking that the question has been discussed, but I think he is still in order if he insists on moving this particular amendment.

Mahboob Ali Baig Sahib Bahadur: Dr. Ambedkar asserted that in the Draft Constitution the government that is proposed is federal and not unitary, but subsequently he stated that nothing turns upon the term used, whether you call it a Union or a Federation. He further went on to say that the word 'Union' has been used advisedly so that the constituent parts may not have the freedom to get out. I take it that I am correct in interpreting the view taken by Dr. Ambedkar. Now, Sir, a Constitution is either unitary or federal, but if the framers of the Draft Constitution had in the back of their minds a unitary government and yet called it federal,.....

Mr. Vice-President: Since the time at our disposal is short, please confine yourself strictly to the point.

Mahboob Ali Baig Sahib Bahadur: If Dr. Ambedkar says that the word "Union" was used not with any great significance, there is no reason why we should not use the correct word "Federation", but if on the other hand the word "Union" was used with a purpose so that in course of time this federal form of government may be converted into a unitary form of government, then it is for this House now to use the correct word so that it may be difficult in future for any power-seeking party that may come into power easily to convert this into a unitary form of government. So, it is for the House to use the correct word "Federation" instead of the word "Union". This is my justification, Sir, for moving this amendment. If you mean that the government must be a federal government and not a unitary government and if you want to prevent in future any power-seeking party to convert it into a unitary form of government and become Fascist and totalitarian, then it is up to us now to use the correct word, which is "Federation". Therefore, Sir, I move that the word "Federation" may be substituted for the word "Union."

The Honourable Dr. B. R. Ambedkar: I do not accept the amendment.

Mr. Vice-President: I now put the amendment to the vote.

The amendment was negatived.

Mr. Vice-President: Then Amendment No. 100 to be moved by Mr. Lari. I think it is covered by amendment No. 99. Does Mr. Lari insist on moving it? (Mr. Lari was not in the House). Then we pass on to amendment No. 101. Mr. Kamath.

Shri H. V. Kamath: I am moving only the second part of it, Sir. At the outset may I submit to you.....

Mr. Vice-President: What do you want to say, Mr. Ayyangar?

Shri M. Ananthasayanam Ayyangar: So far as this amendment is concerned, I do not want any postponement. I do not see any serious objection to the latter part of it being moved.

An Honourable Member: Amendment No. 104 is on the same subject, Sir.

Shri H. V. Kamath: At the outset, may I bring to your notice, Sir, that I originally sent this amendment separately as two amendments. Unfortunately the office has lumped them together into one. Had these amendments been printed separately, no difficulty would have arisen. The first amendment was to insert the word "Federal" before the word "Union", and the second was to substitute the word "Pradeshas" for the word "States".

May I now proceed to the amendment itself. The second part of the amendment only is before the House. I move, Sir:

"That for the word 'States' in clause (1) of Article 1, the word 'Pradeshas' may be substituted."

Shri C. Subramaniam (Madras: General): On a point of order, Sir. This is not an amendment. The word "Pradeshas" is only a Hindi translation of the word "States". If we accept translations of words as amendments, it will create endless complications. The Draft Constitution is in the English language and we should adhere to English terminology and not accept other words, whether they be from Hindi or Hindustani.

Mr. Vice-President: May I point out that it is not really a point of order, but an argument against the use of the word "Pradeshas"? Please allow Mr. Kamath, if he so wishes, to address the House.

Shri H. V. Kamath: I am glad, Sir, that several friends have already made their observations, because that shows how much interest the House is taking in this matter. So I now proceed fortified by that conviction. My reasons for substitution of the word "State" by the word "Pradesha" are manifold. Firstly, I find that in this Draft Constitution, the word "State" has been used in more

senses than one. May I invite your attention and the attention of the House to Part III, Article 7, where it is stated: " 'The State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India." Here we use the word "State" in quite a different sense. So the first reason for my amendment for the substitution of the word "State" by the word "Pradesha" is to avoid this confusion which is likely to arise by the use of the word "State" in different places in different senses in this Constitution. Secondly, Sir,—I hope my suspicion or my doubt is wrong,—but I feel that this word "State" smacks of a blind copying or imitation of the word "State" which you find in the Constitution of the United States. We have been told by Dr. Ambedkar in his first speech on the motion for the consideration of the Draft Constitution that we have borrowed so many things from various constitutions of the world. Here it strikes me that the word "State" has been borrowed from the Constitution of the U.S.A. and I am against all blind copying or blind imitation. Thirdly, Sir, looking at our own history, at least during the last 150 years, the word "State" has come to be associated with something which we intensely dislike, if not abhor. The States in India have been associated with a particular type of administration which we are anxious to terminate with the least possible delay and we have already done so under the sagacious leadership of Sardar Patel. Therefore, this malodorous association with the British regime, which, happily, is no more, I seek to get rid of through this amendment which I have moved before the House. To those friends of mine, who are sticklers for the English language, who think that because this Constitution has been drafted in English, we should not bring in words that are our own, I should like to make one submission and that is this, that the bar to my mind is not against all words that are indigenous, that are Hindi or Indian in their etymological structure. I am reading from the "Constitutional Precedents", regarding the Constitution of the Irish Free State—it was adopted in 1937—which was supplied to us a year and half ago by the Secretariat of the Assembly. If we turn to page 114 of this Constitutional Precedents, we find there is a footnote on that page to this effect:

"Also in the Irish language."

This means that the Constitution of 1937 was adopted firstly in English, because the footnote says it was adopted also in the Irish language. That means to say that originally it was adopted in the English language and later on adopted in the Irish language. If you look at the Constitution of Ireland, we find so many Irish words and not English words, words like—I do not know how they are pronounced in the English language—Oireachtas, Dail Eireann, Taoiseach (for the Prime Minister) and Seanad Eireann. All these words are purely Irish words and they have retained these words in the Irish Constitution adopted in the English language, and they did not bother to substitute the equivalent words in the English language. Therefore it is for this House to decide what words we can incorporate in our Constitution though they are Indian, Hindi or any other language of our country.

So, Sir, for the reasons that I have stated already the word "State" should never be used in our Constitution in this context. Firstly, because it smacks of blind imitation. Secondly, because of its association with a regime which, by our efforts and by the grace of God, we have put an end to. I will make one other submission, Sir. In the new integrated States—former States or Indian States which we have been able to unite into one unit—we have already used the word "Pradesh", and we have called the Himachal Union as the Himachal Pradesh and the Vindhya Union as the Vindhya Pradesh, and there is a movement afoot in Assam to call the union of States there as Purbachal Pradesh.

[Shri H. V. Kamath]

Another point is that we are going to constitute provinces on a new basis in the near future. Already the provinces of Madras, of C. P. and of Bombay have got merged in themselves some of the former Indian States and so the new provinces are going to be different from the old Provinces and therefore the word "Pradesh" is much better and much more apt than the word "State".

Sir, the last point that I want to make is this. My friend Mr. G. S. Gupta has also tabled an amendment to this article. That would arise only if my amendment is adopted. If this fails, the amendment of my friend will not arise. If my amendment is adopted, then certainly consequential changes will have to be made throughout the text of the Draft Constitution.

Therefore, I move this amendment, Sir:

"That in clause (1) of Article 1, for the word 'States' the word 'Pradeshas' be substituted."

and commend it to the acceptance of the House.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): Sir, I would like to submit this with regard to my amendment. Mr. Kamath has given an amendment which only says that in clause (1) of article 1 for the word States, the word 'Pradeshas' be substituted. That would mean, that in other clauses, in other articles, the word may not be substituted. If that contingency arises, it may not be all right. Therefore, my amendment No. 104 may either be treated as an amendment to Mr. Kamath's amendment or I may be allowed to move it now, so that no further complication may arise. Because, it would be really absurd if the word 'States' is changed into 'Pradeshas' only in clause (1) of Article 1. Sir, I shall read Article 1. Clause (1) of Article I says: "India shall be a Union of States." This is the only place where Mr. Kamath has sought to change. It means, instead of 'States' we shall have, "India shall be a Union of Pradeshas." In clauses (2) and (3) and in other clauses, the word 'State' will continue.

Mr. Vice-President: May I interrupt with your permission. If this amendment of Mr. Kamath is rejected, then, amendment No. 104 comes in. Even if it is carried, then, your amendment will come in subsequently and you will have a subsequent chance. I think that would economise the time of the House.

The Honourable Shri Ghanshyam Singh Gupta: Sir, the procedure that I suggest would really economise the time of the House. If I move my amendment as an amendment to Mr. Kamath's amendment, the time of the House will be saved. Otherwise a contingency may arise—I do not say it will. Suppose Mr. Kamath's amendment is carried and mine is rejected,.....

Mr. Vice-President: Do you want to move it now?

The Honourable Shri Ghanshyam Singh Gupta: Yes.

Mr. Vice-President: All right; you may do so.

The Honourable Shri Ghanshyam Singh Gupta: Sir, I move:

"That in Article 1 for the word 'State' wherever it occurs, the word 'Pradesh' be substituted and consequential changes be made throughout the Draft Constitution."

The reason why I want to make this motion just now is what I have already submitted. If Mr. Kamath's amendment is carried, then it will mean that only clause (1) of Article 1 will be amended, and the rest of it will not be amended. But, if my amendment is carried, then, not only in clause (1) of Article 1 we shall have substituted the word 'Pradesh' for the word 'State', but in the subsequent portions of Article 1 and throughout the Draft Constitution, wherever the word 'State' occurs, so that it would be quite consistent. Otherwise, there would be some absurdity left. The reason why I want the word 'State' to be substituted by the word 'Pradesh' is that the word 'States'

in Parts I and II are really provinces and the States in Part III are what are called Indian States at present, none of which are States in the accepted sense of the term. One reason for using the word 'State' may be to synchronise the two, and the other reason could be to follow the American Constitution. The American Constitution has no parallel with us, because, originally the American States were all sovereign States. Our provinces are not at all sovereign; they were never sovereign of the Centre. The Indian States also are not sovereign. We want that India should not only be one nation, but it should really be one State. Therefore, I submit that it should be, "India shall be a union of Pradeshas." I avoid the word 'provinces' because, it will not fit in with what are now called Indian States, we want that both may be synchronised. This word 'Pradesha' can suit both the provinces and what are now called Indian States. Indian States are merging and merging very fast, thanks to our leaders. Moreover they themselves are choosing that word. For instance, they call the Himachal Pradesh, and Vindhya Pradesh. If we use this word for our Provinces as also for the States, all anomaly would be removed. This is all that I have to say.

Shri K. Hanumanthaiya: Sir, I have regretfully to oppose the amendments moved by my friends Mr. Kamath and Mr. Gupta. I have to state that by whatever name the rose is called, it smells sweet. Here, the Drafting Committee has advisedly called India a Union of States. My friends want to call the same by the name of a Union of Pradeshas. I do not want that this occasion should be utilised for any language controversy. I would appeal to the House not to take this question in that light. The word Pradesh, as admitted on all hands, is not an English word. We are considering the Draft in the English language. I would respectfully appeal to my honourable friends who have moved the amendments to show me in any English Dictionary the word Pradesh. We cannot go on adding to the English language unilaterally all the words that we think suitable. The English language has got its own words. We cannot make the Draft Constitution a hotch-potch of words of different languages. Besides, the Constitution, I respectfully submit, is a legal document. Words have got a fixed meaning. We cannot incorporate new words with vague meanings in this Constitution and take the risk of misinterpretation in courts of law. I would therefore beg the mover and the seconder not to press this word to be incorporated in the Draft Constitution. If my friends are very enthusiastic about the Hindi language, we are not far behind them; we will support them. But, this is not the place, this is not the occasion to insert Hindi words in the Draft Constitution. Therefore, Sir, purely as a matter of convenience and legal adaptability, the Drafting Committee's word "State" is quite good. To substitute it by the word "Pradesh" would be to open the flood-gates of controversy, and if there are other amendments to the effect that Kannada words, Tamil words and Hindi words should be substituted in the different Articles of the Constitution, then, as I said, the whole draft, as placed before the House, would be a hotch-potch of linguism. I would earnestly request the members not to press these amendments, because it is merely a translation, and not to introduce non-English words into an English Draft.

Pandit Lakshmi Kanta Maitra: (West Bengal: General): Mr. Vice-President, I have very carefully listened to the speech just delivered by my honourable friend Mr. Hanumanthaiya opposing the amendment of my honourable friend Mr. Kamath. I must tell at once my honourable friend Mr. Hanumanthaiya that he need not have unnecessarily scented a sort of underhand effort to import Hindi linguism by this amendment. In the course of my speech on the general motion for consideration of the Draft Constitution I dilated at considerable length on the question of States. I pointed out then and point out even now that the expression 'State' has got a peculiar connotation in the Constitutional literature of the world. (*Cheers*).

[Pt. Lakshmi Kanta Maitra]

'State' always connotes an idea of sovereignty, absolute independence and things like that. In the United States of America there was a States Rights School. It seriously contended that the States had independent status and the bitterness which was generated by the long drawn out controversy culminated in the bloody civil war. That is the evidence of history. Therefore when we want to describe our country as a Union of States, I apprehend that it is quite possible that the provinces which are now being given the dignified status of States, the native States which had hitherto been under the Indian Princes, but have now either acceded to or merged in, the Indian Union may at a later stage seriously contend that they were absolutely sovereign entities and that the Native States acceded to the Indian Union ceding only three subjects, viz. Communications, Defence and External Affairs. In order to avoid all these likely controversies in the future, I suggested to the House that best efforts should be made to evolve a phraseology in place of 'States'. We must eliminate the chances of this controversy in the future. I am prepared even now—let my friends ransack and find out a substitute. This word has an unsavoury smell about it. In the absence of 'State' it has been suggested that the word 'Pradesh' should be substituted. Let me tell my friend Mr. Hanumanthaiya and those of his way of thinking that the word may be used in Hindi but it is a Sanskrit word. It is not an English word but there will be no difficulty if it is used. Here you describe in article 1 sub-clause (2) that—

"The States shall mean the States for the time being specified in Part I, II and III of the First Schedule."

If you look to Part I of the Schedule, you will find the States that are enumerated there are the Governors' provinces of Madras, Bombay, West Bengal, United Provinces, Bihar, Central Provinces, Assam and Orissa, if you look to Part II you will find Delhi, Ajmer-Merwara, including Panth Pipolda and Coorg. I seriously ask, are you going to describe the City of Delhi as a State? Are you going to describe Coorg as a State? Are you going to describe Panth Piploda as a State? Are you going to describe Ajmer-Merwara as a State? If you do it, it will be simply ridiculous. Therefore in the absence of any other suitable expression I do feel that the term 'Pradesh' which is of Sanskrit origin and which means a country of big area—would be quite suitable. There will be no harm if, in the first schedule, in the description, the words 'Pradesh and territories of India' are substituted. Then it will be beyond the shadow of a doubt as to what is exactly sought to be meant by 'Pradesh'. I know it is an English translation. There is some force in what my honourable friend said that in the English draft itself you should not introduce Sanskrit words. But my friend coming from Mysore should be the last person to desribe his own territory as an Independent State. Does it require any argument? Has he not so far pleaded that these States should have no sovereign existence and that they should be merged with the Union? Therefore there ought to be no sanctity about the word 'State'. I am perfectly prepared if the Draftsmen or any body in this House could find an expression which would denote and connote what we want. We have always pleaded for a strong Centre. In the Draft we have a federal structure but the Drafting Committee has rightly imported to it a unitary bias. We appreciate it. If we are to give effect to that view we have got to find out an expression which will thoroughly embody the concept which we have in view. From this point of view I am convinced that nothing would be lost if we describe the States as Pradesh. In that case all categories of States, Governors' provinces, Chief Commissioners' provinces and what have hitherto been called Native States could all be included under 'Pradesh' and Pradesh could be enumerated in the First Schedule. I support the amendment to substitute 'Pradesh' in place of 'State'.

Shri Rohini Kumar Chaudhari (Assam: General): Sir, in future I would ask you to allow me to speak from the nearest mike because the long distance which we have to travel from the seat to this place sometimes helps us to forget our ideas. (*Laughter*).

I want to oppose this amendment. First of all I oppose Mr. Kamath's amendment and it is very easy to ask the House to throw it out. He has asked the word 'Pradeshas' to be used in place of the word 'States'. How does he come to the conclusion that 'Pradeshas' is a plural of "Pradesh"? You are using the English Grammar again while you are trying to give up the English word. It should be 'Pradeshah' if anything. It cannot be 'Pradeshas'. Therefore on that ground as well as on the ground that if you change the word 'Pradesha' in article 1 and you do not touch the rest of the article, then it becomes meaningless. Therefore on these two grounds I oppose the amendment which has been moved by Mr. Kamath. But I must be careful when I go to oppose the amendment of a person like my friend Mr. Gupta who is the Speaker of the C.P. Assembly.

Nevertheless, I cannot understand the object of the change he proposes. There may be some sentiment behind it which I may understand, but not appreciate. Here, Sir, you have a Constitution in English and the same Constitution in the language called the National Language—call it Hindi or Hindustani. When you write the Constitution in Hindustani, it is but natural that you should use the word 'Pradesh' in place of the word 'State' or 'Province'. But when you are writing the Constitution in the English language, it is not conceivable why you should seek to change the word 'State' to 'Pradesh'. What is the object ? That is what I would like to know. If the object is to acquaint people who are not acquainted with Hindi, with the word 'Pradesh', that I can understand. People from South India do not understand Hindi, and so first of all, let them begin by learning the word Pradesh in the Hindi Language. You start with the word Pradesh now, and next time you give them some other word to learn, and bit by bit bring the language on the people of South India. (*Laughter*). Is that the object?

Then again, it will be most unaesthetic as suffix to the word 'Pradesh' for the United Provinces or the Central Provinces. Would you call then United Provinces Pradesh or the Central Provinces Pradesh ? And if you were to translate the word Province also into Pradesh, then there would be two Pradesh Pradesh, and all this is rather odd.

Come to Bengal. What would you call West Bengal ? Would you call it West Bengal Pradesh ? Paschim Banga Pradesh, I can understand, but I cannot understand putting in the word Pradesh alone.

All these complications will arise if the word is changed. It will help nobody. On the other hand, it will not go against the sentiments of anyone if the word 'State' is used. So I would request Honourable Mr. Gupta to consider this point again.

If by any mischance, this amendment is carried, you, Sir, will kindly allow us time to make amendments in the First Schedule, because it looks very awkward to say U. P. Pradesh, or C. P. Pradesh. I would also like to change from Assam Pradesh to Kamrup Pradesh, because the word Assam jars on everyone's ears as I find now-a-days.

Mr. Vice-President: You must obey the bell.

Shri Rohini Kumar Chaudhari: I am short of hearing bell sounds, Sir.

Seth Govind Das (C. P. & Berar: General): First of all, Sir, I want to assure the honourable members of the non-Hindi speaking provinces, that our object in moving this amendment is not to force Hindi on any one. The

[Seth Govind Das]

language controversy need not have arisen so far as this amendment is concerned. We wanted to drop the word 'State', and therefore, this amendment is being moved.

I was rather surprised to hear the speech of my Honourable friend Mr. Rohini Kumar Chaudhari. He asked us, if Pradesh is accepted, what is going to happen to U. P. and to C. P. ? I want to tell him that it would be Samyukta Pradesh or Madhya Pradesh It will not the U.P. Pradesh or C.P. Pradesh. Mr. Rohini Kumar, I think, knows Sanskrit well, and he will agree with me that even if we adopt the word Pradesh in our Constitution, it does not mean that the English word Provinces or Province would be used along with the word Pradesh. If we want to get rid of the word 'State' because it has got different meanings in different countries, the only way is to put in the word Pradesh there.

Now, as far as the word Provinces is concerned, another controversy is there. There are newly formed States or Unions of States which may not accept the word Province in the beginning. Though all the provinces would be treated alike in the future, in the beginning, to name these State Unions as Provinces will not be a proper thing. Therefore, in view of these difficulties, we thought that the word 'Pradesh' would be the proper word. Even in the English version of the Constitution, I think there should not be any difficulty in putting the word Pradesh. There are many other words which have been taken in the English language, for instance words like 'bazaar' or 'Rajyas'. For these words, when we form the plural of these words, we add the letter 's', and say 'bazaars' or 'Rajyas' in English. Similarly to make a Hindi word into its plural form in the English language you need add only 's'. I do not see what difficulty there is to adding 's' to Pradesh also and say Pradeshas when we want the plural form.

I hope, Sir, that controversy of language and other questions will not be raised here, and if we think the word 'State' should be dropped, and under the present circumstances, the word 'provinces' cannot be taken up, I think the best thing would be to put in the word 'Pradesh' both in the Hindi Constitution and in the English Constitution.

Sir, I support the amendment.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, I do not wish to enter into any lengthy arguments on this question, but only wish to point out what my own reaction to this proposal is. When we met some time back in the two committees—the Union Constitution Committee and the Provincial Constitution Committee— we met jointly, and we considered this matter, and also as to what the names of the Houses should be. After considerable discussion, we came to the conclusion that one of the Houses should be called the House of States. So I say this matter was discussed then in various forms. Now I feel that at the present moment, if any change is made in the name of a province, and it is called a Pradesh, personally I think it would be a very unwise change. (*Hear, hear*). For the moment, I am not going into the merits of it. It may be, we may have to change, but if so, there should be some uniformity about these changes all over the place. It is not right to push in one or two words here and there. They do not fit in aesthetically, artistically, linguistically or in any other way.

Apart from all this, the argument that was advanced, that "State" somehow meant something which we did not wish our units to mean, I think, was not a very strong argument. The example of the United States of America was given. A State is just what you define it to be. You define in this Constitution the exact powers of your units. It does not become something less

if you call it a "Pradesh" or "Province". On the other hand "Pradesh" is a word which has no definition. No one knows what it means. With all respect, no one present in this House can define it because it has not been used in this context previously. It has been used in various other contexts. It is a very good word, and gradually it may begin to get a significance, and then of course it can be used either in the Constitution or otherwise. At the present moment, the normal use of the word varies in hundreds of different ways and the word "State" is infinitely more precise, more definite, not only for the outside world which it is, but even for us. Therefore, it will be unfortunate if we used a completely improvised word, which becomes a linguistic anachronism for a Constitution of this type. Now, I can understand the position when our constitution is fully developed and we have it in our own language with all the appropriate words. Whether "Pradesh" is the right word or not, I cannot say. That is for the experts to decide and I will accept their decision. For the moment we are not considering that issue. We are considering what words should be brought into this present English draft of the Constitution and bringing in words which will undoubtedly sound as odd and inappropriate to many ears in India is not good enough. The use of the word in a particular context is foreign. One has to get used to it, especially in regard to the context, and the more foreign words we introduce, the more you make it look odd and peculiar to the average man. My own test would be, not in putting up linguistic committees and scholars, but taking a hundred odd people from the bazaar and discussing the matter with them and just seeing what their reactions are. We talk in terms of the people but in fact we function often enough as a select coterie forgetting what the people think and understand. Obviously in technical matters you cannot go to the people for technical words, but nevertheless, there is an approach that the people understand and an approach which the people are less likely to understand. Therefore, I would beg this House to consider it from this point of view and maintain the normal English word in the English Constitution and later on consider the matter as a whole as to what other words in our language you will be putting in our own draft, which will obviously have an equal status. But putting it in this would be confusing, and looking at it from a foreign point of view, it would be very confusing because no one would be used to it and it would take a long time even to understand the significance of these changes. For myself I am clear that there should be no difference in the description of what is now a province and what is now a State. There should be a uniformity of description in the two. The proposal is that the word "State" should apply to both, and the second House, if approved, should be called the House of States.

There is another matter. This touches, whether we wish it or not, several other points of controversy in this House. They may be linguistic or call it by any other word. I think it would be unfortunate if we brought in those particular controversies in this way, as if by a side door. Those have to be faced, understood and decided on their merits. There is undoubtedly an impression that changes brought about in these relatively petty ways affect the general position of those issues. I think in dealing with the Constitution, we should avoid that. The Constitution is a big enough document containing principles and deciding our political and economic make-up. As far as possible I should like to avoid those questions which, though important, we could decide in the context of the drafting of the Constitution. Otherwise, what is likely to happen is that we shall spend too much time and energy from the constitutional point of view on irrelevant matters, although important, and the balance of our time and energy is spent less on really constitutional matters. Therefore, I beg the House not to accept the two amendments moved and to retain the word "State".

The Honourable Dr. B. R. Ambedkar : I oppose the amendment.

Mr. Vice-President : The question is :

"That in article 1 for the word "State" wherever it occurs, the word "Pradesh" be substituted and consequential changes be made throughout the Draft Constitution."

I think the Noes have it.

Shri H. V. Kamath : I ask for a division.

Mr. Vice-President: It seems to me that the "Noes" have it. It is not necessary for me to call for a division. I have the power not to grant this request. I would request Honourable Members to consider the position. It seems to be quite obvious that the "Noes" have it.

The Honourable Shri Ghanshyam Singh Gupta: I accept the position that the "Noes" have it.

The Honourable Pandit Jawaharlal Nehru: May I suggest that instead of making our requests, we could raise our hands. That would give a fair indication how the matter stands.

Mr. Vice-President: Does the Honourable Shri G. S. Gupta admit that the "Noes" have it?

The Honourable Shri Ghanshyam Singh Gupta: I accept the position that the "Noes" have it.

The motion was negatived.

The Honourable Shri Ghanshyam Singh Gupta: On a point of order, Sir, you kindly put my amendment to the House and it was lost but Mr. Kamath's motion must be put to the House formally.

Mr. Vice-President: It seems to me that Mr. Kamath's amendment is covered by yours. He wants deletion in particular parts but you wanted it everywhere.

The Honourable Shri Ghanshyam Singh Gupta: Mr. Kamath's amendment is lesser in scope than mine. If the House has not agreed to cent per cent, they might agree to five per cent.

The Honourable Pandit Jawaharlal Nehru: It will probably take less time, Mr. Vice-President, to put the amendment to the vote of the House and it is the proper procedure that it should be put to the vote of the House.

Mr. Vice-President: The question is:

"That in clause (1) of article 1, before the word 'Union' the word 'Federal' be inserted and for the word 'States' the word 'Pradeshas' be substituted."

The motion was negatived.

Shri H. V. Kamath: Sir, I beg to move:

"That in clause (1) of article 1, for the word 'States' the word 'provinces' be substituted."

Shri B. Das (Orissa: General): On a point of order, Sir, in view of the fact that the previous amendment has been rejected by the House this amendment would be out of order.

Mr. Vice-President: The only thing that has happened is the rejection of the word "pradesh".

Shri H. V. Kamath: My honourable friend Mr. B. Das rose to a point of order to the effect that this is not in order. The amendment that has been thrown out by the House is to the effect that the word 'Pradesh' be substituted for the word 'State', which does not rule out this amendment, viz., the substitution of the word 'State' by any other word, if the House so chooses. I have therefore moved my amendment that for the word 'State' in the article and wherever it occurs throughout the Draft in this context the word 'Province' be substituted. The formal amendment is that in this particular clause the word 'State' be replaced by the word 'Province'. When I moved my first amendment

with regard to the word 'Pradesh' I made my position clear as to why I am against the retention of the word 'State'. I do not wish to repeat those arguments which I then advanced before the House. I might just recall them by saying that the word 'State' smacks of imitation as the word finds a place in the constitution of the U.S.A. Secondly the word 'State' has a bad connotation or bad odour about it, because of the association of the Indian States with the British regime which is now dead. I would therefore in all circumstances plead with this House that the word 'State' should be eliminated at all costs and by all means and if the House is not in a mood to accept the word 'Pradesh' I would certainly entreat them to accept the word 'Province', as the lesser of the two evils. Our position today is that we have dispensed with or eliminated the old Indian states; and have we not already adopted the terms Himachal Pradesh and Vindhya Pradesh? We want to level them up to the position of the Indian Provinces and therefore in the new set up I feel that the word 'Province' is more happy and would express the meaning of the structure of the component units that we are going to set up in our country. Sir, I therefore move my amendment and commend it to the acceptance of the House.

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept the amendment.

(At this stage Shri Himmat Singh K. Maheshwari rose to speak.)

Mr. Vice-President: The Honourable Dr. Ambedkar has already replied to the debate and I am sorry I cannot allow any further debate on the motion.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, if after every motion is moved by a member and you ask Dr. Ambedkar whether he agrees to it and after allowing him to express his views you debar other members from speaking on the subject, it will be very hard on the House.

Mr. Vice-President: I am afraid Pandit Hirday Nath Kunzru has not realised exactly my position. I am always prepared to give every possible facility to every member here, which I need not demonstrate further than by reference to what I have done in the last few days. But just now we are pressed for time. After Mr. Kamath moved his amendment I waited for some time to see if any body would stand up and nobody stood up and when specially I found that Mr. Kamath had repeated the arguments which had been formerly stated by him, I thought that I would not be going against the wishes of the House by asking Dr. Ambedkar the question whether he wished to reply. If I failed to understand the attitude of the House I am very sorry.

Pandit Hirday Nath Kunzru: You are perfectly within your right in not allowing discussion of a clause which you regard as trival and on which you think there has been sufficient discussion. You have the power to stop discussion and ask the Member in charge to reply. If in exercise of this power you asked Dr. Ambedkar to reply, there can be no objection to what you have done.

Mr. Vice-President: Then I will put the amendment to vote. The question is:

"That in clause (1) of Article 1, for the word 'States' the word 'Provinces' be substituted."

The motion was negatived

Mr. Vice-President: Amendment 108, Shri Mahavir Tyagi.

Shri H. V. Kamath: Division, Sir.

Mr. Vice-President: You are a little late.

Shri Mahavir Tyagi : Sir, I am not very keen to have all the words mentioned in my amendment inserted. I do not also want to make a speech and waste the time of the House. However, I want to make one point clear and with that end in view, I shall formally move this amendment:

"That in clause (1) of article 1, for the word 'States' the words 'Republican States and the sovereignty of the Union shall reside in the whole body of the people' be substituted."

[Shri Mahavir Tyagi]

In the Draft Constitution I find that the residence of sovereignty has not been described. Where sovereignty lies has not been definitely laid down. I want that this may go on record. I shall be content if the Honourable mover of the Constitution would place before the House either in connection with the Preamble or some other Article of the Constitution, an amendment which will clearly lay down that the sovereignty shall reside in the whole body of the people. The word 'State' has one meaning in one place and another meaning elsewhere. It will therefore not be satisfactory to say that the sovereignty should rest in the States. What does the Honourable Member suggest? Whether the sovereignty reside in the Union or in the States? From the Draft it is not clear. My amendment therefore seeks to lay down definitely where sovereignty resides or shall reside in future.

I want also to make one thing clear. If we remain in the family of the United Kingdom and remain attached to them, sovereignty will probably technically remain with the King. I want to save the country from that danger. I want to make it absolutely clear that the sovereignty virtually, technically and practically resides in the whole people.....

Mr. Vice-President: May I point out that the proper place for an amendment of this nature is the Preamble?

Shri Mahavir Tyagi: It is neither defined in the Preamble in so many words. I want that it should be clearly defined. I am a layman. I would like to know from the expert draftsmen whether the Preamble forms part of the body of the Constitution. Since the Preamble is not an Article of the Constitution, may I know if it comes in the body of the Constitution proper? Can Preamble always override the law? I don't think it does. What I want is that sovereignty should be defined in one of the Articles of the Constitution. The Preamble mentions only casually that we are constituting India into a sovereign union. From this my friends of the Drafting Committee draw the conclusion that the sovereignty resides in the "people". That does not satisfy me. We cannot depend on the implication drawn. I insist that sovereignty should be defined in the body of the Constitution itself. I want that sovereignty should reside in the whole people of the country, and not in State or Union. State may only mean to be a sort of governmental structure in the Centre, or it may include the people as well, or it may be only the union or one or more states. The provinces will also be known as States hereafter. Let us therefore define in unambiguous terms the actual residence of sovereignty for future. I may submit that in the Constitution of China it is stated that the sovereignty rests in the whole people. We may lay down the same thing in our Constitution also. I therefore beg to move this amendment.

Shri Gopikrishna Vijayavargiya (United State of Gwalior, Indore, Malwa: Madhya Bharat): Mr. Vice-President, I come from an Indian State and I have a particular interest in this amendment, and I wish the House accepts it. There are also Indian States coming in as states in this Constitution. We do not want the Rajpramukhs and others to be there permanently. Of course, as the covenants have been signed, let them be there for some time. But, in the Constitution, we should lay down that even the common people can become heads of the provinces and States, and this will be one of the methods by which we will bring the States into conformity with the provinces. This is an important question. This issue must have been engaging the attention of the States Ministry. This is therefore a very urgent affair. Ever before we finish our labours at Constitution-making, we must make all attempts to see that the States do come on par with the provinces. This amendment can achieve that object. Sovereignty is a very important power and, as has been pointed out, it has been laid down in the Chinese constitution also. So there is no harm in accepting this amendment. I request the Honourable Members to vote for it.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, Sir, the amendment moved by Mr. Tyagi is a very important amendment. I have myself given notice of a similar amendment (No. 189) which runs as follows:

"That the following new Part be inserted after Part I and the subsequent Parts and articles be renumbered accordingly:—

'PART I-A

General Principles

6. The name of the Union shall be BHARAT.

7. Bharat shall be a sovereign, independent, democratic, socialist Republic.

8. All powers of government, legislative, executive and judicial, shall be derived from the people, and shall be exercisable only by or on the authority of the organs of the government established by this Constitution.

9. The National Flag of Bharat shall be the tricolour of saffron, white and green of pure hand-spun and hand-woven Khadi cloth, with the Dharmachakra of Asoka inscribed in blue in the centre in the middle stripe, the ratio between the width and breadth being 2:1.

10. Hindi written in the Devanagri script shall be the National language of Bharat:

Provided that each State in the Union shall have the right to choose its own regional language as its State language in addition to Hindi for use inside that particular State.

11. English shall be the second official language of Bharat during the transition period of the first five years of the inauguration of this Constitution.

12. The National Anthem of Bharat shall be the "Vandemataram" which is reproduced in the Second Schedule.

[Note.—The subsequent Schedules be renumbered accordingly.]

13. The Arms of Bharat consist of the Three Lions above the pedestal and the Dharmachakra, as are depicted on the top of the Asoka pillar at Sarnath.

14. The capital of Bharat is the City of Delhi'."

I personally think that this amendment should not be incorporated in this clause. There should be a separate Clause containing the substance of the amendment I have given notice of. In Chapter II they have defined sovereignty. In my amendment I have suggested how this should be put in. All powers of Government, legislative, executive and judicial shall be derived from the people and shall be exercisable only by or on the authority of the Government established by this Constitution. So, the sovereignty shall reside in the people and all powers of the State, legislative, executive and judicial, shall belong to the people.

Sir, my friend from the States just now pointed out that the matter is a very important one because, if we do not say here that the source and the fountain of all authority is the people, the theory that kings have got divine rights will continue. Therefore it is important that it should be stated in the Constitution that it is the people who have sovereignty. Here in our country where the States have been a standing sore which we hope to wipe out very soon, I think this provision should find a place in the Constitution. I would request my learned friend, Dr. Ambedkar to say, when he replies to this amendment, that he accepts this principle. I hope he will find a suitable place for its insertion in the Constitution. On the Irish model, I suggest that the next chapter should contain definite provisions relating to the name of the Union, its language and other things. It may be stated therein that all power of government, legislative, executive and judicial, is derived from the people. I think this is an

[Prof. Shibban Lal Saksena]

amendment of fundamental importance and as such I hope that it will not be rejected summarily and that Dr. Ambedkar will insert it in some suitable place in the Constitution.

Maulana Hasrat Mohani (United Provinces: General): Sir, I rise to support the amendment moved by Mr. Mahavir Tyagi for the reason that it conforms to the spirit of the Objectives Resolution of this House. Our Prime Minister has repeatedly stated that the Constitution should be in conformity with the Objectives Resolution not only recently but from the very beginning. He stated —I am reading from this printed book—

"We are not changing the Objectives Resolution at all. The Objectives Resolution is history and we stand by all the principles laid down in it."

May I remind my friend, Dr. Ambedkar, that when a Committee was formed to frame the Constitution, it was expressly mentioned that they will have to conform to the Objectives Resolution. Now, Dr. Ambedkar has gone out of his way. He has not conformed to the Objectives Resolution and I request all of you to see what he has done. Instead of drafting the Constitution in conformity with the Objectives Resolution, he wants to make the Objectives Resolution conform to what he is proposing now. This Draft Constitution is a bundle of inconsistencies and is worth throwing only into the wastepaper basket. He has gone his own way and therefore all his efforts are only waste of time and energy.

Mr. Vice-President: Please confine yourself to the amendment, Maulana Saheb.

Maulana Hasrat Mohani: I support this amendment because it is strictly on the lines of the Objectives Resolution. Instead of conforming to the Objectives Resolution, Dr. Ambedkar has changed the word "Republic" into a "State" and the word "independent" into "Democratic". This shows the way his mind is working. The Draft Constitution makes me sure that he wants to establish a unitary Indian Empire which will again be subject to the greater Anglo-American Empire consisting of America and its satellites, the British Commonwealth and some of the Western Powers of Europe.

Mr. Vice-President: I will ask you again to confine yourself to the amendment.

Maulana Hasart Mohani: Sir, I support the amendment of Mr. Tyagi and I oppose the whole Constitution. May be Dr. Ambedkar produced this Draft because as Law Minister he was asked to do it. But what he has produced is a wretched thing and therefore I think that he should make amends for the mistakes he has committed. With these words I support the amendment.

Shri Prabhudayal Himatsingka (West Bengal: General): Sir, I beg to oppose the amendment. It is absurd that an attempt should be made to put words here and there. The Draft Constitution is a complete framework and where sovereignty lies, what power is given to the executive and the legislatures, etc. have been defined by the different sections in it. To make an attempt to put in words here and there will be dangerous and if we accept such amendments, I think the whole Draft Constitution may be upset and we do not know where we will be landed. Of course, if there is anything to be said on principle, that may be allowed, but to make verbal alterations in the Draft which has been considered by the Committee will mean a considerable waste of time and we should not accept amendments in this fashion.

Shri M. Ananthasayanam Ayyangar: I beg to oppose the amendment. In the Preamble it is stated that "We, the people of India, having solemnly resolved to constitute, etc." We are the persons who have met to give a Constitution for ourselves. Unless we are sovereign, we cannot give a Constitution

for ourselves. Hitherto it was the Parliament in the United Kingdom that framed Constitutions. The fact that we have been elected by the various legislatures and come here for framing a Constitution shows that sovereignty is inherent in the people.

Shri Mahavir Tyagi : Of course we are here as a sovereign body. But what about the future ? This sovereignty has been transferred to us by the British, why do you not vest it back with the people?

Mr. Vice-President: Allow him to proceed.

Shri M. Ananthasayanam Ayyangar: I will answer Mr. Mahavir Tyagi. We have not come here on adult franchise, but we represent three hundred odd million people and are gathered here to frame a Constitution for ourselves. If we are in a position to give a constitution on behalf of the people, it follows that in future the House elected on adult franchise represnting larger interests, will be even more sovereign. From this it follows that sovereignty rests with the people. Therefore I cannot find any difficulty in leaving it as it is and no such introduction as is contemplated in the amendment is necessary. I would only draw the attention of the House to the preamble in the Constitution of the United States which says:

"We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity....."

There are a number of articles in this Constitution. Later on the constitution was amended, The framers of the Constitution or the people of the United States who subsequently amended that constitution never said that there was a lacuna in the Constitution or that the sovereignty vested in themselves rather than with the people. Therefore, it is unnecessary. A doubt is created and to avoid that doubt an amendment is sought to be moved. There is another difficulty also. I want the sleeping dogs to lie. So far as the States are concerned, the States rulers in some places have been claiming sovereignty and we are trying to liquidate these rulers. Many of them have been liquidated, and these rulers have come into these States. In Part III of the 1st Schedule the States are there with the rulers in some form or other. The people are already beginning to assert themselves and the whole thing will disappear even on that ground. I do not want the clause to be inserted here as the amendment contemplates. It is enough to leave the Preamble to itself and to work itself. We are sovereign and in that capacity we have gathered here and we shall give unto ourselves a Constitution. It is unnecessary to create a ghost and then afterwards lay it. I oppose this amendment, Sir.

Shri Lokanath Misra (Orissa: General): Mr. Vice-President, Sir, one of the honourable members of this House has opposed this amendment on the ground that by the acceptance of this amendment, the whole structure and the whole scheme of the Draft Constitution will be changed. It seems to me that this is a bold statement and I will not like to digest a statement like this. The structure of the Constitution will be changed as if we are committed not to change it or we will abide by anything that will not change it. It seems to me therefore to be a dangerous statement to say that we will not accept because the structure of the scheme of the Draft Constitution will be changed. We are here to change it, if need be. Indirectly, it means also that the very basis, the scheme, or the structure of the Constitution is such that it militates against the very principle that underlies this amendment. If that is so, it is still more dangerous because this amendment clearly says—and no more than that—the sovereignty of India rests in the whole body of the people of India.

Now, one of my friends has just said that it does really vest with the people of India and therefore it will not be necessary. I submit it is a sort of a hypocritical statement, because I remember to have heard Dr. Ambedkar, while he was speaking somewhere that this sovereignty rests with the

[Shri Lokanath Misra]

Government of India and I want to make a difference between the Government of India and the people of India; they may be identical, they may be different. It might be that the Government of India will be supposed to be one thing and the people of India might be supposed to be another thing. They were so one day. Therefore, we must make it clear where, after our freedom, sovereignty vests. In the people of India? In the Cabinet? In the Government? In the President or somewhere else? I therefore think that to avoid this snag once and for all, we ought to declare that the sovereignty vests in each one of the citizens of India and for that purpose at least this amendment is very appropriate. I do not want to insist that this amendment should be passed and put in here, but it must be clear that there need be no reservation in the minds of us that sovereignty does not lie in each one of the citizens of India. I therefore support the spirit of this amendment and reiterate that really India's sovereignty vests in each one of her citizens, however high or low, pandit or no pandit, fool or wise; it belongs to the people, each one of them, once and for all.

Mr. Vice-President: I shall now put this amendment to vote.

Shri Mahavir Tyagi : Mr. Vice-President, Sir, in view of what the learned draftsman has said namely that the sovereignty remains vested, in spite of this draft, in the people, I do not wish to press my amendment. I hope, Sir, Dr. Ambedkar agrees that his draft means that it vests with the people, and his explanation may well go down into the records for future reference.

The Honourable Dr. B. R. Ambedkar : Beyond doubt it vests with the people. I might also tell my friend that I shall not have the least objection if this matter was raised again when we are discussing the Preamble.

Shri Mahavir Tyagi : Then I beg leave of the House to withdraw my amendment.

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

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move :

"That in clause (1) of Article 1, after the word 'States' the words 'equal *inter se*' be added."

In commending this amendment to the House, I would like to express my gratitude to the Chairman of the Drafting Committee for giving us a new version of what the Constitution is intended to be. It was somewhat new, to me at least, to hear that a Constitution is a mechanism for regulating the various organs of Government and their functions; and that any desire to include in it any aspiration of the people might be regarded as somewhat out of place. I am grateful for this view of the matter, as in future I shall conduct myself in my amendments and in my speeches accordingly. I must, however, add that when reference is made to the chapter on the Directives I can assure Dr. Ambedkar that I too have read them, though perhaps not with as much frequency and intensity with which he may have read it. The 'Directives' are, in my opinion, the vaguest, loosest, thickest smoke-screen that could be drawn against the eyes of the people, and may be used to make them believe what the draftsmen never intended or meant perhaps. When those matters are brought before the tribunals for adjudication or arbitration, they might not be interpreted in the sense the people might believe those clauses to convey.

In proposing this particular amendment, Sir, I have no illusion about the actual state of affairs. In the States today, including both—what are called the Provinces and which have still to be called the States proper,—I realise there is no equality, of population or possibilities, area or resources.

But I also recognise that even if equality of political status does not exist today, we have, at any rate, to strive towards a state of affairs in which they

would really and truly be equal amongst themselves, as members of a Common Federation. If this Union is to be a true federation, as we are assured it is going to be, if this Union is going to be a democrtic federation, as we have also been promised again and again, then, I suggest that it is of the utmost importance that the constituent parts of the Union should be and must be equal amongst themselves.

This equality, I may assure the House, does not exist, and need not consist in area or population, in revenue or resources, in industrial or educational development. Unfortunately, we are all aware that the various parts of this country, politically divided or geographically demarcated, are not all equally developed and advanced. It must be the first task of the Union to see that those who have, for no fault of their, lagged behind, shall not continue to remain backward, and those who have had, for some adventitious reasons, some advantage over others and moved forward more than others, shall also not be so selfish as to insist upon retaining their position and keeping those who are backward still lagging behind. The country cannot progress, the ideals we have all in view regarding the future growth and prosperity of this country will not be realised, if any single part of it is not able to pull its full weight in the advance of the country. That is one reason why I suggest that we must, here and now, insert in the Constitution our desire, at any rate, that in this Union, when the Constitution is properly framed and working, the units shall be regarded as politically equal amongst themselves. I mean equal politically, in the sense that if one unit, however large it may be, has the power of taxation of a certain kind, other units, however small, shall also have that power; if one unit has the right to maintain and use its own police force, the others also would have it; if one unit has the right to maintain its exclusive army, then another unit also shall have it. This being my conception of equality of States *inter se*, the existing differentiation between those which have been called provinces and between those which have been called States, those States which have merged and those who have acceded will have to be abolished at the earliest opportunity, even though today it may be an unfortunate fact of our position.

This is not the only reason which actuates me in putting forward this suggestion before the House. I look forward to the day when this Union of India shall consist of a body of Village Panchayats, knit together amongst themselves as co-operative republics, which will combine together not only for the greater advancement of their own inherent resources, but also for the greater prosperity of the country as a whole. In this view of the destiny of this Union, in this view of the position and potentiality of each component part of the Union, I think it would be the greatest hindrance if any one is politically considered, or socially regarded as unequal to others. If it is thought that some only should have the leadership while the others have the destiny of always being followers, it would be, I repeat, an untold disaster to the country. Just as we are resolved and are all agreed that we shall have amongst ourselves, as citizens or individuals, equality before the law, just as we have thought that all distinctions of caste and creed shall disappear from the face of this land, so also, I submit, that this country must consist, as soon as we can manage it, of equal units, equal parts of the federation, each anxious, each competent, each equipped with the utmost possible means for development of the resources and the possibilities inherent in it; each also intent upon and each also willing to co-operate in the strengthening and development of the entire country, to the best of its possibilities. We have many parts in this country which are admittedly very backward in all kinds of material or moral development. It is towards them, it is for them, that I feel it necessary to insist that if they are non-equal *inter se* today, they shall be made equal at the earliest opportunity.

[Prof K. T. Shah]

For this reason, the motion that was made just before, regarding the republican character of every component part of the Union, meets with my highest and heartiest approval. All these remnants, all these absurdities of economies, and all these anachronisms of history which are embodied in the so-called Ruling Princes, must disappear. It is only when we have got rid of these autocrats and plutocrats that we shall be able to design a humane and reasonable Constitution and try to attain the aims of life, which our great Teacher has placed before us.

It is for the same reason also that I have, in another part of this Constitution, tabled an amendment to that effect. I hope, Sir, that hereafter, at any rate, the Union of India shall consist of villages or groups of villages, which are each in themselves autonomous units, which are each in themselves republics, and each, if necessary, with the right to co-operate with their neighbours, so that as a result of their combined and collective effort, the Indian people just emerging from political bondage and economic slavery, may soon attain their rightful place in the role of the nations, and make their effective contribution to the progress of mankind.

I commend my amendment to the House.

Shri H. V. Kamath: Mr. Vice-President, Sir, I rise to support the amendment moved by my friend Professor Shah. In view of the fact that the House has not accepted the qualifying word 'fedueral' for the word Union, I think it is necessary for us to define the status of the States. As my friend remarked, the provinces or States or Chief Commissioners' provinces certainly are not equal amongst themselves. Therefore, for the sake of clarity, for the sake of accuracy, for the sake of precision in constitutional terminology, it is essential for us to define the relationship or status of the States as between themselves. Therefore, the amendment of my friend Professor Shah is very apposite in my estimation. In a Constitution of this sort, which is essentially, as the footnote on page 2 says, federal in structure, there should not be one State superior to another, or one State inferior to another. There should not be any one State which may be called *primus inter pares*, that is first among equals. We should avoid this in the future constitutional set up. Obviously, it is necessary for us to define that all the States as amongst themselves should be equal. All the State should have only an equal status amongst themselves. If at all there is a superior State or Government or a mechanism, it is the mechanism of the Union Government. That is, if I may say so, it may be a super State or a supra State so far as India is concerned. So far as the States themselves are concerned, they should be absolutely equal amongst themselves. I therefore support the amendment of my friend Professor Shah to the effect that India shall be a Union of States which are equal *inter se*.

Shri M. Ananthasayanam Ayyangar: Sir, I am not able to follow either the mover or Mr. Kamath who supported him. If we accept the amendment, it means that India shall be a Union of States equal *inter se*. What is this equality? Is it in extent or area or population or economic resources? In what are they to be equal?

An Honourable Member: States.

Shri M. Ananthasayanam Ayyangar: What are the States ? So far as representation is concerned, most of the States in Part I of the First Schedule are equal; there is no difference made between the one and the other. So far as the States in Part III of the First Schedule are concerned, they have come in by certain agreements. We have accepted the agreements and until we are able to revoke the agreements or introduce different sets of agreements, we cannot make them equal. Even amongst ourselves, in all the Provinces or States which are included in Part I of the First Schedule, there cannot be

an equality of the kind envisaged. This is absolutely an indefinite amendment. So far as the States are concerned, according to the population they have representation both in the Lower and Upper Houses. Therefore this amendment is ununderstandable, vague and impractical and ought not to be accepted.

The Honourable Dr. B. R. Ambedkar: Sir, I oppose the amendment.

Mr. Vice-President: I put the amendment to vote.

The amendment was negatived.

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

"That at the end of clause (1) of Article 1, the following be inserted :

'and shall be known as the United States of India'."

Sir, this is a non-controversial amendment. It gives a bigger, a more dignified and a more sonourous name to the Union. If any precendent is needed we have it in the "United States of America". I submit that in order to keep the balance between the Western hemisphere and Eastern hemisphere we should adopt this expression in India. India is the leading country in the East and we should have a very dignified name. As I have submitted it is a non-controversial amendment, and I ask the House to consider it on the merits.

The other amendment is an alternative to this. I move:

"That at the end of clause (1) of Article 1, the following be inserted :

'and shall be known as the Union of India'."

My other amendment is this. I move:

"That at the end of clause (1) of Article 1, the following be inserted :

'and shall be known as the Indian Union'."

Sir, I submit these are three alternatives. I would prefer the first but it all depends on the House as to what it thinks about them.

Shri H. V. Kamath: Sir, I rise to oppose the amendment Nos. 110 and 112. As regards amendment 110 the very argument that my friend advanced that we have a precedent in the United States, is itself an argument against accepting it, in my judgment. He said something to the effect that there should be a meeting of East and West or some words to that effect. I certainly stand for harmony, a synthesis of the East and the West, but I certainly do not want any hybrid development. The amendment which my Honourable friend has moved before the House seeks to bring about such a hybrid development between the East and West and we do not want to be suspected at this stage when we are pursuing or supposed to be pursuing a neutral foreign policy. We do not want the faintest indication to be made here in this House that we are going to copy either the U.S.S.R. or U.S.A. As regards U.S.S.R. there is no effect or influence in this Constitution and as regards U.S.A. precisely because this will smack of copying the U.S.A. Constitution I oppose this amendment which seeks to add "shall be known as the United States of India".

As regards No. 111, I support the amendment and we will thereby be eliminating or removing that hateful word 'State'. Just now the House was pleased to throw out that amendment and I do not want the 'State' to come in by the back-door again in describing the structure of the Indian Union and therefore I would support my Honourable friend Mr. Naziruddin Ahmad in referring to India as the Union of India.

[Shri H. V. Kamath]

As regards No. 112, once we accept the words 'Union of India' there is no need to consider the third amendment. I think from the point of view of language, sound and its reaction on the ears, the Union of India is a much more dignified expression than Indian Union. I therefore oppose 110 and 112 and support 111.

The Honourable Dr. B. R. Ambedkar : Sir, I oppose all these amendments. With regard to the first amendment that India should be known as the United States of India, the argument set out by my friend Mr. Kamath is a perfectly valid argument and I accept it whole-heartedly. I have given my own views as to why I used the word 'Union' and did not use the word 'Federation'.

With regard to the other amendment that India should be known as the Union of India, I also say that this is unnecessary, because we have all along meant that this country should be known as India, without giving any indication as to what are the relations of the component parts of the Indian Union in the very title of the name of the country. India has been known as India throughout history and throughout all these past years. As a member of the U. N. O. the name of the country is India and all agreements are signed as such and personally I think the name of the country should not in any sense give any indication as to what are the subordinate divisions it is composed of. I therefore oppose the amendments and maintain that the Draft as it is presented to the House is the best so far as these amendments are concerned.

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

Mr. Naziruddin Ahmad: Sir, I beg leave to withdraw the amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. Vice-President: Amendment No. 113.

Mr. Naziruddin Ahmad : I am not moving 113.

But I am moving 114. Sir, I beg to move:

"That in clause (2) of Article 1, the word 'The' occurring at the beginning be deleted."

Sir, this part really tries to define the words "The States". I submit that the word 'The' is a definite article and not a part of the name or nomenclature. Though the word has been used in this context, the word has been used also in other combinations like 'A State' 'Any State' 'Every State' and all sorts of States.

The Honourable Dr. B. R. Ambedkar : Sir, I raise a point of order. My point of order is that this is not an amendment. Unless it changes the substance of the original proposition, it is not an amendment. I am trying to find out the reference in May's Parliamentary Practice. But I would like to raise this point at this moment. If my friend will-forgive me, I think he is in the habit of moving all sorts of amendments, asking for a comma here, no commas there and so on and I think we must put a stop to this sort of thing in the very beginning.

Mr. Naziruddin Ahmad: On the very threshold of independence, if I am to be stopped like this, I shall bow down and submit to the decision of the Chair.

Mr. Vice-President: What is your reply to the point of order?

Mr. Naziruddin Ahmad : My reply to the point of order raised is this I want to remove the word "The" from the article and therefore it is an

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17th November
1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Price 5 annas.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 17th November, 1948

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the pledge and signed the Register:

1. Shri B. H. Khardekar (Kolhapur State).
2. Shri A. Thanu Pillai (Travancore State).

DRAFT CONSTITUTION—*contd.*

ARTICLE I—*contd.*

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now go on with the amendments. Amendment No. 126—Prof. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That at the end of sub-clause (c) of clause (3) of article 1, the following be added:

'or as may agree to join or accede to or merge with the Union'."

The clause, as amended, will read:

"such other territories as may be acquired or as may agree to join or accede to or merge with the Union."

I think this is a very simple amendment. It tries to include within the territories of the Union not only those which are at present in it, or which, under the provisions of this Article, come under its scope; but also those which after the Constitution is passed may agree to join, or accede to, or merge with, the Union. I confess that I am not very enamoured of the term 'acquired'. I do not suggest that acquisition is necessarily by conquest. I agree that acquisition may take place by other means than conquest. I have, therefore, not suggested any alteration of the word "acquired".

At the same time, however, I feel that the term is not sufficiently inclusive. It does not take account, for instance, of the addition to the territory by voluntary agreement, or by accession of States, which, at the time the Constitution is passed, had not yet acceded and/or were not merged with the Union. I have in mind two particular instances which have led me to table this amendment. There are neighbouring territories even today which are independent States, with which, however, we have much affinity. They may find in a closer union with us much greater chance of their own advancement or prosperity; and as such it is possible that they also may like to join this Union, and take all the benefits that joining with such a great State, with such resources as we have, may bring to them as well. There is in this suggestion no intention of coercion or conquest by any use of force, or aggressive designs upon any neighbouring territory, in an amendment of this kind. This is only a provision that, without any necessity to amend the Constitution, if some such contingency arose, we could simply under the existing provisions accept the joining or accession of such States as today are independent, sovereign States in their own name, in their own right; and which may yet feel the necessity of much closer union than any treaty or alliance may provide. I

[Prof. K. T. Shah]

trust, therefore, that this provision which is only permissive and facilitating the joining of other States, will find no objection in any part of this House.

Then there is the accession of States, which, at the time I put in this amendment, had not acceded to the Union. Everybody would understand the example I have in mind. Even now I am not clear whether that particular State has, in point of technical, constitutional law, actually acceded to the Union even today. Whatever that may be, here is a provision that the territories of the Union will include also such a State if and when it accedes.

The third contingency is of merger. This contingency of States completely identifying themselves to the point of sacrificing their own identity and becoming part and parcel, integral units, of this Union should I suggest also be provided for so that in the long run the Union should consist of parts which I hope would be equal *inter se*, making the components of the Union.

These three contingencies I have sought to provide for by this amendment, viz. States joining voluntarily, States acceding—which have not yet acceded, and States becoming merged in the Union, may arise at any time; and so I do not think this amendment will in any way be objectionable in any part of the House. The merger problem is ticklish, rather delicate, and we do not yet know what final shape this great development will take. But whatever that shape may be, the integrity of the Union, the integral association, if I may put it that way, of States which are still retaining somehow their separate identity, will help to make this Union territory much more uniform under single jurisdiction and the parts thereof much more equal *inter se* than is the case today. On these grounds, therefore, Sir, I think this amendment ought to commend itself to the House.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I oppose the amendment.

Mr. Vice-President: The question is:

That at the end of sub-clause (c) of clause (3) of article 1, the following be added :—

"or as may agree to join or accede to or merge with the Union."

The motion was negatived.

Mr. Vice-President: As regards the next amendment, No. 127, standing in the name of Sardar Hukam Singh, I do not think it arises out of Article 1. It may be discussed at the proper time and place.

I think the same objection applies also to amendment No. 128, standing in the names of Shri B. A. Mandloi and Thakur Chhedi Lal. It can be discussed hereafter.

Now we come to amendment No. 129. Professor K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, this amendment which stands in my name is as follows:

"That the following proviso be added to article 1:

'Provided that within a period not exceeding ten years of the date when this constitution comes into operation, the distinction or difference embodied in the several Schedules to this Constitution and in the various articles that follow shall be abolished, and the member States of the Union of India shall be organised on a uniform basis of groups of village Panchayats co-operatively organised *inter se*, and functioning as democratic units within the Union'."

This also is part of the general idea I am trying to propagate. It tries to realise the ideals which I hope will commend themselves to the House, namely that, in the long run, this Union must consist of locally autonomous units, equal *inter se*, which will be the strength as well as the salvation of this country, in my opinion.

Sir, it appears to me that in the various Schedules as well as in the various articles that follow, there is an obvious distinction between not only the old-time Provinces as they were called, but the old-time States whose designation is now sought to be applied to all the Members of the Union which are amongst themselves clearly not on an equal footing.

Now, there may be reasons why at the present time it is not possible to make them all, with one stroke of the pen so to say, equal by themselves and amongst themselves. I recognise the difficulty. I notice, however, that even in the Constitution, and in the reports of the Experts Committee and others, the intention obviously is to see that even though at the present time there may be these difficulties, within a given period—I have given here the period of ten years—within a given period these differences should disappear, and the country reorganised on a uniform basis. These differences, at the present time, hinder not only the uniformity of jurisdiction of authority and of working but I suggest it will also impede the developing of the country for lack of this very uniformity. Whatever, therefore, may be the heritage of the past, and whatever may be the restricting, conditioning factor of today which compels us to recognise these inequalities between the member States, I suggest that we must make up our mind, and this Constitution should provide that these differences, these inequalities, these variations, must disappear, and that too within a pre-determined, within a given period of ten years.

The ten-year period suggested is sufficiently long not to cause any difficulty in smoothing away the present differences. The ten year period would be sufficient to readjust the tax systems, the ten year period would be sufficient to readjust if necessary the judicial systems, the legal and fiscal systems, the ten year period would be sufficient to readjust all differences in communications, transport, and other common factors which at the present time do cause a great deal of variation, and, in my opinion, a great deal of hardship, impediment and heart-burning as between the various units. To give you but one instance, it has been recently held by many people that the existence of the States as independent jurisdictions leads to considerable evasion of taxation; or, what is worse, that it leads to an artificial attraction of industry from one area into another, where the taxes are believed to be lower or where other facilities for the growth of industry are easier or greater. These arise not from the inherent qualities, resources, or peculiarities of those regions; these arise not from the natural differences that cannot be abolished by human effort; they arise simply and solely because there are varying jurisdictions, which permit all these differentiations to go on accumulating.

As I have already suggested, their presence is bound to work against the best long range interests of the country, which seeks to march forward, which seeks to make a uniform plan for all-round development within a given period. And therefore it is but right and proper that we should try and eliminate these traditional differences, so that within the stated period we should attain the goal that we have in view.

I have already stated that these differences are of human creation. They are legacies of the past. But as these are impediments in the way, they must be removed at the earliest opportunity. The period of ten years is long enough for making constructive efforts to readjust and make more or less uniform the various units that compose the country as between themselves.

In trying to reconstruct and re-adjust these various units, I have further suggested that they should be re-organised. The moment we have an opportunity to do so, we must re-organise them into autonomous village groups, which would have more natural geographical affinity amongst themselves and

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more economic sympathy amongst themselves than happens to be the case in the *ad hoc* creations which we call either provinces or States.

We have in this regard a burning problem already causing considerable amount of difficulty in the reconstruction of the units or provinces on what is called linguistic basis. The constitution of the provinces on a linguistic basis is not by itself a guarantee that the intrinsic unity of each region or group will be properly developed; and, what is more, that the principle of democratic self-government of the *people*, by the *people*, for the *people*, would be equally promoted, if these various units are reconstructed on any other basis but that of local unity, local affinity, and local identity of interest. It is for that reason that I am suggesting the re-grouping, the re-construction and the re-adjustment on a village basis.

The constitution of the villages on a co-operative basis, enabling them to make common cause, make of them a sort of internal republics so to say,—*imperium in imperio*, if I may use the expression,—would be the best guarantee for the development that we have in view. They would be able to take note of the local resources, the local talent, and the local possibilities much better than any distant Government, like the one at the Centre or even at the provincial headquarters even of the size that many of them in our country are.

Sir, remarkable is the emphasis that our great leaders have laid upon the re-vitalisation of the villages. As such I think I am following very honoured foot-steps, if I put forward this ideal before you, and invite you to consider the possibility of re-developing the State in the only manner in which in my opinion it can be assuredly developed, e.g., on the basis of co-operative village reorganisation, forming groups sufficiently strong and big to enable them to progress among themselves, and realise the ideal of a better standard of living that we have been hoping and striving for all these years. I commend this proposition to the House.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I agree with the suggestion that, early or late, we must re-organise this country on a system of village panchayats. But today there are not such panchayats. That being so, if today we are told that within a period of ten years, to be provided for in the Constitution itself, all distinction should be abolished, it would not be a practical proposition. Myself and Professor Ranga have given notice of an amendment to the Directive Principles to the effect that the State shall take care to see that village panchayats are re-organised and re-established everywhere, so that, as far as possible, in the interests of democracy, the villages may be trained in the art of self-government, even autonomy. In that way there may be development of villages. But, in the substantive portion of the Constitution itself, to say that the distinction between State and State should be abolished and the whole country re-organised on the village autonomy basis, is a different thing. We cannot do this immediately. The villages are unfortunately torn by factions and there is nothing like responsibility there now. Under the circumstances I do not want to say anything more than what Dr. Ambedkar has said. He is a bit too pessimistic; I do not agree that we can never reform the villages and develop them for self-government. We must be able to reform the villages and introduce democratic principles of government there. It will all take time. Therefore, now to say that all the existing differences should be abolished at once, is too much to accept. We also expect that, with the indefatigable energy shown by Sardar Patel, the distinction between the States and Provinces will automatically disappear. But let us not rush matters too much. The differences are disappearing fast and popular Governments are coming into existence everywhere. At this rate I am sure that before ten years elapse there will be no difference between either

Prof. K. T. Shah or any one sitting on the other benches as regards the ultimate goal that we should reach.

The only question is about the method and pace with which this object should be achieved. I would appeal to him not to press the amendment. We are all engaged on the common task of attaining the absolute sovereignty of the people including those in States. We must devise different methods to suit local needs and conditions. This country will ultimately consist of a number of village republics, autonomous as far as possible, knitted into a number of States with a Union at the Centre. We do derive all authority from the people who must be trained in the art of government and the responsibility must flow from them. But this amendment is premature. I therefore request Professor Shah not to press his amendment. If he does not do so, I am sorry I shall be obliged to oppose it.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, in this amendment, Professor Shah has enunciated two important principles: one is that after ten years he expects the Government of India to attain a particular shape and hopes that it shall be organised on the basis of groups of village panchayats, organised *inter se*, and functioning subordinately to the Union. Sir, with these two principles I think most Members will agree. I have myself given notice of certain amendments wherein I have stated that after ten years, many of the principles embodied in the Constitution would be in operation and would have the force of law. Similarly, also we have provided elsewhere in our amendment that the present system of village administration should be organised on the basis of village panchayats. It was pointed out to the House the other day that we want the Republic of India to be based on small village republics having autonomy. But I do feel that the law as it stands here is vague and should be amplified. Therefore I suggest that instead of putting this in this omnibus form, Mr. Shah should bring in amendments to the various clauses where these should be inserted. I personally agree with the two principles, firstly, that the distinction embodied in the several schedules should be abolished, and secondly, that village panchayats should find a place in the Constitution and that everywhere a uniform method of forming village panchayats should be adopted. In fact in the Gandhian Constitution which is proposed by Professor Aggarwal, he points out that Mahatma Gandhi wanted that there should be village republics. He envisaged that for about every 20,000 people there should be a panchayat and these units should elect the Taluk panchayats and the district panchayats. I agree that these panchayats should find a place in the Constitution and should also have some voice in the election of the Upper House, but I think in this place it is not proper to say that the distinction embodied in the schedules should be abolished. That, I think, is going too far, apart from its being very vague. Instead of this, I would suggest that Mr. Shah should table amendments to the various schedules when they are taken up. I hope Mr. Shah will not press his amendment.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I beg wholeheartedly to support the amendment proposed by Professor Shah where he says that the member States of the Union of India shall be organised on a uniform basis of groups of village panchayats co-operatively organised. I would like to go a step further and say that instead of making the village panchayat a unit, we should make a village Soviet as the unit of our Constitution. It will not be out of place, to point out to you that I approached Mahatma Gandhi and presented to him the Soviet Constitution and discussed with him all the points contained in that Constitution. He agreed and at least accepted two principles of that Soviet Constitution. One of those two principles was, "No work, no vote". The second thing was that our unit must be a village Soviet and he said that the Constitution of the Soviet was quite similar to the Constitution of

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the All-India Congress Committee here, as we have got village Congress Committees which elect representatives to the Tehsil Congress Committees; the Tehsil Congress Committees elect their representatives to the District Congress Committees, the District Congress Committees to the Provincial Congress Committees and the Provincial Congress Committees to the All-India Congress Committee. The same process has been adopted by the Soviet Constitution. Every village there is a self-sufficient Village Soviet. It sends its representatives to the higher Soviets. If we give up this idea of the village panchayats and accept the village Soviet as our unit, all these absurdities which exist in the Constitution by way of provision for minorities, etc. will disappear. With this suggestion, I wholeheartedly approve and support the amendment proposed by Professor Shah.

The Honourable Dr. B. R. Ambedkar: I oppose the amendment.

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

That the following proviso be added to article 1 :—

"Provided that within a period not exceeding ten years of the date when this constitution comes into operation, the distinction or difference embodied in the several Schedules to this Constitution, and in the various articles that follow shall be abolished, and the member States of the Union of India shall be organised on a uniform basis of groups of village Panchayats co-operatively organised *inter se*, and functioning as democratic units within the Union

The amendment was negatived.

Mr. Vice-President: The next one is number 130. Mr. Mandloi.

Shri B. A. Mandloi (C. P. & Berar: General): Sir, I am not moving it.

Mr. Vice-President: Let us now go back to the amendments which we did not take into consideration on Monday. No. 83.

Shri M. Ananthasayanam Ayyangar: I suggest that these may be allowed to be held over and that article 1 may be put to the vote now.

Mr. Vice-President: Please allow me to proceed. No. 83 deals with script and language. This may be discussed at the proper time when we discuss the question of language and script under article 99. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

"That at the beginning of the heading above article 1, the word and Roman figure 'CHAPTER I', be inserted."

Sir, I submit this raises an important question of drafting. Honourable Members will find that in the Draft Constitution chapter numbers are not continuous. There are many places where there is no chapter number but there are some cases where are several chapters and they are numbered separately. The result of this is some amount of confusion. If we number the chapters consecutively apart from the Parts to which they appertain, the advantage will be that, if we refer to a particular chapter, it will be enough indication of the chapter belonging to that particular Part. If we however retain the existing numbering, the result would be that we have to say Chapter I of Part III, Chapter III of Part IV, etc. I submit, Sir, it would be more advantageous to adopt running chapter numbers in the Draft Constitution. That would be highly advantageous from a practical point of view. Sir, I have before me many samples of Indian enactments. The practice in India has been uniform in this respect, though I must point out so far as the existing Government of India Act is concerned, the present draft follows the practice in England. There is in that Act no contiguous running chapter numbers as in Indian practice.

Coming, Sir, to the various enactments, with which everybody is familiar, namely, the Civil Procedure Code, the Criminal Procedure Code, the Evidence Act and all other Acts, Members will find that these Acts are divided into several parts. The chapter numbers are not individually and separately numbered and although there are several parts, the chapter numbers are continuous. The result is an enormous simplification in the matter of citation. In the Criminal Procedure Code and in the Penal Code and in other Acts, we refer to certain chapter number without reference to the parts to which they belong. I submit this is the universal practice in India. There are many other Acts which are divided into Parts but the chapters bear running numbers. Considered, therefore, from the point of view of established practice in India and the point of convenience in the matter of citation, I think the chapters, irrespective of the Parts to which they belong, should bear consecutive numbers. This is a matter of convenience and I thought it my duty to place my views before this House. With these few words I commend my amendment to the acceptance of the House.

The Honourable Dr. B. R. Ambedkar: Sir, I oppose the amendment.

Mr. Vice-President: The question is:

"That at the beginning of the heading above article 1, the word and Roman figure 'Chapter I', be inserted."

The motion was negatived.

Mr. Vice-President: I find that so far as item No. 85 is concerned the first part of it may be moved as the other portion has been disposed of already. I therefore call upon Mr. Lokanath Misra to move the first part.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Sir, I move that we now pass on to Article 2 and postpone discussion on the remaining amendments to Article 1. So far we have not been able to reach unanimity on this important point. I am not without hope that if the discussion is postponed, it may be possible to find some solution that may be acceptable to all. So, nothing will be lost. After all we have to take the decision, today, tomorrow or the day after; nobody will suffer thereby, but if we can find something that satisfies everybody, I think the House will feel all the stronger for facing the tasks that lie ahead of it. I hope there will be no difference of opinion on this point and I do not see why there should be any opposition from any quarter. After all, we will take the decision. Nobody else is going to add to or diminish the strength of any section or of any group here, and we are not here as sections or groups. Everyone of us is here to make the best contribution towards the solution of these most intricate, complicated and difficult problems and if we handle them with a little patience, I hope we will be able to settle them more satisfactorily than we would otherwise. So, I suggest that the discussion on the rest of the amendments to Article 1 be postponed.

Shri H. V. Kamath (C. P. & Berar: General): Mr. Vice-President, Sir, I appreciate the arguments that have been advanced by my honourable Friend, Pandit Govind Ballabh Pant. I only wish to know from you, Sir, for how long a time these amendments Nos. 85 to 96 both inclusive are going to be held over. It will create, I submit, Sir, a very bad impression in the outside world and in our own country, if we go on postponing the consideration of the amendments dealing with the very first word in the very first clause.

Honourable Members: No, no.

Shri H. V. Kamath: And if we go on postponing the consideration of these amendments indefinitely, it would certainly create a bad impression. I want to know, therefore, for how long it will be held over.

Shri R. K. Sidhwa (C.P. and Berar: General): Sir, I am rather surprised at the argument advanced by my honourable Friend, Mr. Kamath that if we

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postpone this matter indefinitely the outside world will be rather surprised. On the contrary, if we come to a satisfactory solution and a unanimous decision on this matter, the outside world will have really a very high opinion of this House. I feel, therefore, that the suggestion made by my honourable Friend Pandit Pant should certainly be accepted unanimously. I am rather surprised that of all persons Mr. Kamath should have come forward to speak in this manner. What Pandit Pant stated was really a very fine solution and I was expecting from this House that instead of creating any kind of dissension, if we really come to a unanimous decision, it will be really a record in the history of this Constitution. I therefore, very heartily and strongly support the motion moved by my honourable friend, Pandit Pant.

The Honourable Dr. B. R. Ambedkar: I support the suggestion made by Pandit Govind Ballabh Pant.

Seth Govind Das (C. P. & Berar: General): Sir, I wholeheartedly support Pandit Pant's proposition. The House very well knows how clear I am for naming our country BHARAT, but at the same time, we must try to bring unanimity of every group in this House. Of course, if that is not possible, we can go our own ways; but up to the time there was any possibility of reaching a unanimous decision by any compromise, that effort must be made. Sir, I support this proposition, and I hope that by the efforts of our leaders, there will not be any division on fundamental points like this, and not only this proposition, but other propositions also, like that our national language, national script etc., we shall be able to carry unanimously. I, therefore, support the views just expressed by the Honourable Pandit Pant.

Shri H. V. Kamath: I only wanted to know for how long the amendments will be held over.

An Honourable Member: It may be a day, a week or a fortnight.

Mr. Vice-President: I hold that a discussion of these few clauses should be held over till sufficient time has been given for arriving at some sort of understanding. This will be to the best interests of the House and of the country at large.

Shri Lokanath Misra (Orissa: General): Sir, I have a submission to make. If it is your decision, Mr. Vice-President, Sir, that my amendment is not to be moved, or that it is to be held over, I have no objection. Of course, I agree that my amendment consists of two parts, changing the name of India, and some other things. I am very glad that this change of the name is being held over so that we may come to some unanimous decision which will be pleasant to all. But, I submit, I should be allowed to move the rest of the amendment. That is in no way similar to the amendment moved by Professor K. T. Shah. If I had really known that, I would have said what I have to say when he moved that amendment. I, therefore, request you kindly to allow me to move the rest of the amendment, without amending the name of India.

Mr. Vice-President: Apart from the language employed, I consider that what is said in your amendment is substantially the same as what was said in the amendment of Professor K. T. Shah. It has been discussed. It cannot be discussed again.

Shri Lokanath Misra: That is taking one by surprise.

Article 2

Mr. Vice-President: The next motion is:

That Article 2 stand as part of the Constitution.

Shri H. V. Kamath: Article 1 may be put to vote.

Mr. Vice-President: That Article has been postponed. It cannot be put to vote now till all the amendments are considered.

Mr. Naziruddin Ahmad: Amendment No. 131.

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

"That for Article 2 and Article 3, the following be substituted:

'2. Parliament may be law—

(a) admit into the Union new States;

(b) sub-dividide any State to form two or more States;

(c) amalgamate any two or more of the following classes of territories to form a State, namely—

(i) States,

(ii) part or parts of any State,

(iii) newly acquired territory;

(d) give a name to any State admitted under item (a) or created under items (b) and (c) of this article;

(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislative Assembly or in the case of a bi-cameral Legislature, of both Houses of the Legislature of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where the proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been ascertained'."

Sir, in introducing this amendment, I should submit that many points are involved in this. The two Articles, Articles 2 and 3, are to a certain extent overlapping. In Article 3 there are certain redundancies, and there are one or two minor gaps. I shall deal with them just now. An analysis of Article 2 shows that Parliament may admit into the Union new States and establish new States. These are the two points in Article 2. In Article 3 power has been given to the Parliament to (a) form a new State by separation of territory from a State or by uniting two or more States or parts of States, (b) increase the area of any State, (c) diminish the area of any State, (d) alter the boundaries of any State, and (e) alter the name of any State. I submit, Sir, that the first element in Article 2, admitting into the Union a new State, is covered by the first part of Article 3. With regard to Article 3, the three elements of increasing the area of a State or diminishing the area of a State, or altering its boundaries, I submit, are redundant. If you subdivide a State, you decrease the area. If you add to one State another or a part of a State, you necessarily increase the area, and a re-adjustment of territories involves necessarily alteration of boundaries. I beg to submit that the three elements of increasing the area or diminishing the area or altering the boundaries are so necessarily implied in the other part of the Article and it would be meaningless and practically useless to embody them in the Constitution. I submit, Sir, that if you have the power to divide one State into two or more parts, or unite two States or parts of States, these three elements are necessarily implied and therefore, they need not be repeated. This element of increasing the area, diminishing the area and altering the boundaries are consequences of the other powers given. These consequences need not be mentioned. They are necessarily involved in the process of division, addition and subtraction. So to that extent the three elements must go.

Then the condition of separation of territories from a State in Article 3 (a)— I think a better way would be, to say, we "sub-divide" any State into two or more States. I think this would be a better expression; the element of uniting two or more States, etc., a better expression

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would be "amalgamating any two or more States or parts of States". Then there is no power given in the existing article of amalgamating newly acquired State. The powers of the Parliament in this respect are specifically given in my amendment but this is entirely absent in the Draft Constitution.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, the Honourable Member Mr. Naziruddin has moved an amendment to Articles 2 and 3. Article 2 has been taken up for discussion now and not Article 3. So unless both are taken up for discussion, the amendment as it stands cannot be moved.

Mr. Vice-President (to Mr. Naziruddin): Please go on.

Kazi Syed Karimuddin: What is your ruling, Sir?

Mr. Vice-President: When I said he is to go on, the decision should be understood.

Mr. Naziruddin Ahmad: That is why I have attempted to incorporate into the amendment the following points:

(a) admit into the Union new States,

(b) sub-divide any State to form two or more States;

(c) amalgamate any two or more of the following classes of territories to form a State, viz.,

(i) States,

(ii) Part or parts of any State,

(iii) newly acquired territory;

(d) give a name to any State admitted under items (b) and (c) of this article;

and then again the power to alter name is already given. I submit that these embody the essential features of clauses 2 and 3. It avoids repetition and it eliminates parts of articles which are redundant, viz., which are necessarily implied. That disposes of the body of the proposed amendment. Then with regard to the present clause 3, ...

Shri H. V. Kamath: On a point of Order. How can he refer to Article 3 when it is not under discussion? Amendment to Article 3 cannot be taken up at this stage.

Mr. Naziruddin Ahmad: I submit that a ruling has already been given that the amendment is in order, viz., that for Articles 2 and 3 the following article be substituted. This is certainly an amendment to Article 2 although it incorporates in the amendment also article 3. So the Honourable the Vice-President has already ruled that the amendment is in order.

I submit that the phrase 'increasing area' or 'diminishing area' would not be very appropriate. You do not increase an area by addition or diminish it by means of subtraction. The words are mostly used in an intransitive sense. As an instance you can increase the area of a balloon by inflating and decrease it by deflating. Therefore I submit that these words are not appropriate. If these elements are to be retained, the words 'enlarge' and 'reduce' would be more appropriate. The increase of an area by addition or reduce it by subtraction is not in current use, but at any rate the other objection is that they a absolutely redundant. I therefore submit that the body of the proposed n Article 2 should be accepted.

With regard to the proviso, the only effect of the amendment would b in the proviso (a) in part I there is a condition of representation in the lature. In No. 2 there is the question of the Resolution. I submit P proviso (a) should be deleted. A Resolution as mentioned in Part 2

(a) of the Proviso is better. So the only effect of the change of proviso is to eliminate Part 1 of Proviso (a). These are the essential changes proposed in this amendment, viz., elimination of some of the points which seem to me to be redundant. There are one or two points which seem to have been overlooked. In proposing this amendment I do so with great respect. I do not in the least disparage the high quality of work which the Drafting Committee has done.

My next amendment which I shall move in this connection is as follows:—

"That in Article 2 the words 'from time to time' be deleted."

The words 'from time to time' have caused some amount of trouble before. These words have been provided for in the General Clauses Act. Under that Act if any power or right is given, it is understood that unless the contrary is specifically indicated that the power or right may be exercised "from time to time as occasion arises". It follows that if any power is given, unless the contrary is definitely stated, that power may be exercised from time to time. This expression appears again and again in the Draft Constitution. We have put specific provisions in the Draft Constitution itself in Article 303, Clause (2) which provided that in the interpretation of this Constitution, the provisions of the General Clauses Act shall apply. I shall read out this clause—

"Unless the context otherwise requires, the General Clauses Act, 1897 (X of 1897), shall apply for the interpretation of this Constitution."

The Government of India Act was controlled in this respect by the U. K. Interpretation Act of 1889, and this clause (2) of Article 303 is similar to that provision in the Government of India Act. It, therefore, follows that in the interpretation of this Constitution, we should have regard to the General Clauses Act. And the General Clauses Act definitely provides for this thing, that the words "from time to time" need not be repeated again and again. If we say that the President can give a ruling on points of order, it implies that he can give the ruling as and when occasions arise, from time to time. So in practical life, and in daily drafting of Statutes, we find it as an invariable rule that this phrase is not repeated, here and there, and now and again. In this Constitution itself, the words "from time to time" do not appear everywhere. The House will see that in Article 2, line 1, the expression 'from time to time' appears. "Parliament may, from time to time..." do certain things. But coming to Article 3, we merely find "Parliament may, by law....." and no 'from time to time' occurs there. There are numerous other places where the words 'from time to time' in a similar context do not appear. I submit that the drafting should be uniform. If in one place we introduce the phrase 'from time to time', and if we do not introduce it in another analogous place, the argument may be made that in one place the power may be exercised from time to time, and in the other place it may not be exercised from time to time. It is this reason that I say that there should be some uniformity in the matter of drafting. The words 'from time to time' must be excluded. But if they have to be introduced at all, they have got to be introduced in all other similar places.

With these few words, I submit my amendment for the consideration of the House. I merely wanted to raise these points for discussion, and if necessary for redrafting of the article, if the points are worthy of consideration.

Shri M. Ananthasayanam Ayyangar: Sir, I oppose these amendments. These are verbal matters and I would even appeal to you not to allow such amendments. I request you to put it to vote now.

The Honourable Dr. B. R. Ambedkar: I oppose the amendments.

Mr. Vice-President: I will put the amendments nos. 131 and 132 to vote. Dr. Ambedkar has spoken already and there cannot be any further discussion.

Kazi Syed Karimuddin: Sir, on a point of order. If this amendment is accepted, it will amend Article 3. Therefore, unless a ruling is given that Articles 2 and 3 should be discussed and taken into consideration in regard to this amendment, this cannot be put to vote now. If it is accepted, as I said, it will amend Article 3 also.

The question is:—

"That for article 2 and article 3, the following be substituted :

'2. Parliament may by law—

(a) admit into the Union new States;

(b) sub-divide any State to form two or more States;

(c) amalgamate any two or more of the following classes of territories to form a State, namely—

(i) States,

(ii) Part or parts of any State,

(iii) newly acquired territory;

(d) give a name to any State admitted under item (a) or created under items (b) and (c) of this article;

(e) alter the name of any State;

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislative Assembly or in the case of a bi-cameral Legislature, of both Houses of the Legislature, of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where the proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been ascertained; and

That in article (2), the words "from time to time" be deleted'."

The amendments were negatived.

Mr. Vice-President: Amendment No. 133, I find is connected with the Preamble, and so it may be taken up later, this is not the appropriate place for it.

Amendment Nos. 134 and 135, are not moved.

Amendment No. 136 has been disposed of.

Amendment No. 137 is a verbal change and I rule it out of order.

Amendment No. 138 is not moved.

Then I put Article 2.

Shri H. V. Kamath: Sir, I wish to speak on Article 2.

Mr. Vice-President Sir, it appears to me that there is a little lacuna in this Article which my Honourable friend, the able jurist and constitutional lawyer that he is, will rectify, when it is finally drafted by the Committee. If we turn to the report of the Union Constitution Committee—I am reading from the reports of the Committee, Second Series, from July to August 1947, copy of which was supplied to each member last year—there Article 2 begins thus:—"The Parliament of the Federation" of course, we have changed the word Federation into Union but here you import the word 'Parliament' suddenly in Article 2 without saying to which Parliament it refers. This is a lacuna, because there is nothing so far in the previous article regarding Parliament. So we must say here the "Parliament of the Union". This lacuna, I hope, will be rectified.

The Honourable Dr. B. R. Ambedkar: We shall take note of what Mr. Kamath has said.

Mr. Vice-President: Then the question before the House is that Article 2 form part of the Constitution.

The motion was adopted.

Article 2, was added to the Constitution.

Article 3.

Mr. Vice-President: Now we come to Article 3.

Amendment No. 139 is a negative amendment and is out of order.

Then we come to Amendment No. 140. Not moved.

The Honourable Shri K. Santhanam (Madras: General): Sir, I move:

"That in clause (a) of article 3, the following words be added at the end :

'or by addition of other territories to States or parts of States.' "

I need not take up the time of the House. It only makes clause (a) logically perfect, because a new State can be formed by having a part of one of the acceding States and adding to it other territories which may be acquired by India.

Shri M. Ananthasayanam Ayyangar: I request the House to accept the amendment because by this addition alone will the article become complete.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I am agreeable to the principle of the amendment moved by my friend Mr. Santhanam. The only point is that I like slightly to alter the language to read "or by uniting any territory to a part of any State".

The Honourable Shri K. Santhanam: I am agreeable to the change.

Mr. Vice-President: The question is:

"That in clause (a) of article 3, the following words be added at the end :

'for by uniting any territory to a part of any State.' "

The motion was adopted.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That the following new proviso be added after clause (e) of article 3 :

'Provided that every proposal for legislation which increases or diminishes the area of an existing State, or alters its name or boundaries, shall originate in the Legislature of the State concerned or affected, in such form as the rules of procedure in the Legislature concerned consider appropriate.' "

Sir, here is a proposal to consult first the Legislature of the State, whose name or boundaries are proposed to be altered, or whose areas are proposed to be increased or diminished. We are all aware that the existing Units which make up this Federation are not equal *inter se* are not logical, are not happily constructed so as to minister to the development of the country or even of the areas themselves. It is necessary, and it will soon perhaps have to be implemented in some form or another, that these areas be reconstructed. That would mean that their boundaries, perhaps even their name, and their territories, may be altered, upwards or downwards. If that becomes necessary, then I submit the proper course would be to consult the people themselves who are affected, if not by a direct Referendum to the people affected, at least by a consultation of the Legislature, rather than that the change be imposed from above, as in my opinion the clause as it stands requires. The parties primarily affected are the people themselves of the areas whose boundaries or name is to be altered, or whose position has in any way to be reconstructed. And it is but a simple proposition—a mere matter of fundamental principle I submit —that you should in a democratic regime consult the peoples affected, and not merely lay it down from above. I recognize that the article as it stands provides that in any such event you should have either a representation from the representatives of the people in the Central Parliament to suggest such an alteration, or alternatively the President should have received some such re-

[Prof. K. T. Shah.]

presentation from the people concerned. But it will be the act of the Central authority, and not of the people primarily affected to suggest this variation. I submit that that is in principle a wrong approach.

I am afraid that the general trend of the Draft Constitution, as I view it, seems excessively and unnecessarily to place power and authority in the Centre, to the serious prejudice not only of the Units, but even of the very idea of democracy as we flatter ourselves we are embodying in this Constitution. If it is a democratic Constitution, if we desire that the people should govern themselves, or that, even if they are not prepared today to do so, they should learn necessarily by mistakes, to be fit for and practice self-government, then I think it is of the utmost importance that a provision like this should be insisted upon.

Any question which relates to the alteration of the present units, their territories, boundaries or name, should begin with the people primarily affected, and should not come from the authority or power at the Centre. The authority at the Centre obviously is not familiar with local conditions; or they may have other outlook, may have other considerations, other reasons, for not accepting or agreeing to such a course. The authority at the Centre, even if moved by the representatives of the areas concerned by some resolution or other procedure, may be guided by the very few persons which, under any scheme of election, will constitute the representatives of those areas in the Central Parliament; and not really consult the entire population, the adult voters of the areas concerned, which I submit is the first requirement of any such readjustment.

Lest I should be misunderstood, I would at once add that I am certainly not in love with the present position, or the continuance of the alignment of the provinces and States as they stand today. They need to be altered, they must be altered. But they must be altered only as and how the people primarily affected desire them to be altered, and not in accordance with the preconception, the notion, of such adjustment that those at the Centre may have, even if some of those at the Centre are the representatives of the people concerned.

I make it imperative, therefore, that the first proposition, the initiation of the movement either to integrate or to separate, either to readjust the boundaries or to bring about any new form of configuration, must commence with the people themselves. There is another consideration in the matter, which also should not be ignored, namely that in any such readjustment, it will not be one single group that will be affected or concerned; there may be at least two or more which are likely to be affected; and as such the representatives of those two groups, or those more than two groups in the Centre, may not be quite competent to reflect the views of the people as a whole. I admit that in democracy majority rule should prevail. But the majority has not the monopoly of being always right and still less to be always just. If that is so—and I strongly believe it is so—then I submit that the only cure, if you wish to retain democracy, is to secure the assent in advance, to make the initiation, from the beginning, from or by the people concerned in suggesting such readjustment.

The actual readjustment of boundaries, the actual formation of new units, may be left to competent Boundary Commissions, or to any other body or authority that may be set up, either *ad hoc* for the particular purpose, or in general terms as a kind of a statutory, constitutional authority, semi-judicial in character, that may decide upon and settle these matters. But in the absence of any such provision, and apart altogether from such mechanism that may be set up hereafter, I think the principle must never be lost sight of that the matter should originate, and should originate alone, with the peoples concerned. I personally would advocate a direct Referendum rather than merely

a vote of the Legislature, but lest the suggestion of a referendum sound too revolutionary to be entertained by a respectable House like this, I suggest—and I have put in the amendment—the idea only of the Legislature being consulted, and not necessarily the people as a whole. I trust this evidence of my intense, ingrained moderation would commend itself to the House, and allow the amendment—not merely to be opposed by a simple formal "I oppose", but by some sort of a reasoned answer rather than a fiat. Sir, I commend this proposition to the House.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, may I make a submission. I think that if Dr. Ambedkar moves his next amendment things will be clarified and such of us as have amendments in our names will be able to decide whether we should move them or not.

Mr. Vice-President: I agree with you fully. Dr. Ambedkar may move his amendment.

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

"That for the existing proviso to article 3, the following proviso be substituted:

'Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislature of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where such proopsal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been obtained.' "

Mr. Vice-President, if one were to compare the amended proviso with the original proviso as it was set out in the Draft Constitution, the Members will see that the new amendment introduces two changes. One is this: in the original draft the power to introduce the Bill was given exclusively to the Government of India. No private Member of Parliament had the power, under the original draft, to propose any legislation of this sort. Attention of the Drafting Committee was drawn to the fact that this was a somewhat severe and unnecessary curtailment of the right of the Members of Parliament to move any motion they liked and in which they felt concerned. Consequently we deleted this provision giving the power exclusively to the Government of India, and gave it to the President and stated that any such Bill whether it was brought by the Government of India or by any private Member should have the recommendation of the President. That is one change.

The second change is this: under the original Article 3, the power of the Government of India to introduce legislation was restricted by two conditions which are mentioned in (a) (i) and (ii). The conditions were that there must be, before the initiation of any action, representation made to the President by a majority of the representatives of the territory in the Legislature of the State, or a resolution in that behalf passed by the Legislature of any State whose boundaries or name will be affected by the proposal contained in the Bill. Here again, it was represented that there might be a small minority which felt very strongly that its position will not be safeguarded unless the boundary of the State were changed and that particular minority was permitted to join their brothers in the other State, and consequently if these brothers remained there, action would be completely paralysed. Consequently, we propose now in the amended draft, to delete (i) and (ii) of (a) and also (b) of the original draft. These have been split up into two parts, (a) and (b). (a) deals with reorganisation of territory in so far as it affects the States in Part I, that is to say, Provinces and, (b) of the new amendment relates to what are now called Indian States. The main difference between the new sub-clauses (a) and (b) of my-

[The Honourable Dr. B. R. Ambedkar]

amendment is this: In the case of (a), that is to say, reorganisation of territories of States falling in Part I, all that is necessary is consultation. Consent is not required. All that the President is called upon to do is to be satisfied, before making the recommendation, that their wishes have been consulted.

With regard to (b), the provision is that there shall be consent. The distinction, as I said, is based upon the fact that, so far as we are at present concerned, the position of the provinces is different from the position of the States. The States are sovereign States and the provinces are not sovereign States. Consequently, the Government need not be bound to require the consent of the provinces to change their boundaries; while in the case of the Indian States it is appropriate, in view of the fact that sovereignty remains with them, that their consent should be obtained.

As regards the amendment moved by Prof. Shah, I do not see much difference between my amendment as contained in sub-clause (a) of the new proviso and his. He says that the discussion shall be initiated in the States. My sub-clause (a) of the proviso also provides that the States shall be consulted. I have not the least doubt about it that the method of consulting, which the President will adopt, will be to ask either the Prime Minister or the Governor to table a resolution which may be discussed in the particular State legislature which may be affected, so that ultimately the initiation will be by the local legislature and not by the Parliament at all. I therefore submit that the amendment of Professor Shah is really unnecessary.

The Honourable Shri K. Santhanam: Mr. Vice-President, I wounder whether Professor Shah fully realises the implications of his amendment. If his amendment is adopted, it would mean that no minority in any State can ask for separation of territory, either for forming a new province or for joining an adjacent State unless it can get a majority in that State legislature. I cannot understand what he means by 'originating'. Take the case of the Madras Province for instance. The Andhras want separation. They bring up a resolution in the Madras legislature. It is defeated by a majority. There ends the matter. The way of the Andhras is blocked altogether. They cannot take any further step to constitute an Andhra province. On the other hand, as re-drafted by the Honourable Dr. Ambedkar, if the Andhras fail to get a majority in the legislature, they can go straight to the President and represent to him what the majority did in their case and ask for further action removing the block in the way of a province for them. If they are able to convince the President, he may recommend it and either the Government of India may themselves sponsor legislation for the purpose or any private Member or a group in the Central legislature can take up the question. Therefore, by Mr. Shah's amendment instead of democracy we will have absolute autocracy of the majority in every province and State. That is certainly not what Professor Shah wants. But, unfortunately, in his enthusiasm for what he calls the principle, he has tabled an amendment which altogether defeats his object. I therefore suggest that the amendment should be rejected and the proposition moved by Dr. Ambedkar should be accepted.

Mr. Vice-President: Mr. Sidhwa.

Shri R. K. Sidhwa: Mr. Vice-President.

Shri H. V. Kamath: Sir, are we considering amendments 149 and 150 together? There are two amendments to amendment 150.

Mr. Vice-President: Let us hear what Mr. Sidhwa has to say. We will certainly take up the amendments to which Mr. Kamath has drawn attention.

Shri R. K. Sidhva: I do not accept the arguments advanced by Mr. Santhanam against the amendment moved by Professor Shah. He stated that if in the Madras legislature a motion for the separation of the Andhra is lost by a majority, the Members affected will have the right to represent their case to the President at the Centre, under the proposition moved by Dr. Ambedkar. If, Sir, that is the effect of the proposition, I do not welcome it. It will be unfair to seek the aid of the President against the expressed wish of the majority under democracy. If the majority say that they do not want separation of the Andhras, the minority should not have the right to go to the President by the backdoor and urge separation.

But, Sir, I do not share the views of Professor Shah in this matter. Dr. Ambedkar's amendment is very clear and comprehensive. It states that if anybody wants a change of name or separation, he can move for that in the local legislature. This is what Prof. Shah wants too. But I do feel that Dr. Ambedkar's official amendment is more comprehensive and should be supported. Though Professor Shah says that he has in mind referendum on matters of this kind, the amendment does not mention it. If a referendum is to be taken, the legislature has the necessary power to ask that it be done. The arguments advanced by Mr. Santhanam do not appeal to me. But, as I said, Professor Shah's amendment restricts the utility of the provision. I therefore commend the amendment of Dr. Ambedkar to the House.

Mr. Vice-President: Mr. Naziruddin Ahmad may move his amendment.

(The amendment was not moved.)

Mr. Vice-President: Pandit Hirday Nath Kunzru.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. Vice-President, I beg to move:

"that in the amendment of Dr. Ambedkar as just moved, for the words 'the previous consent' the words 'the views' and for the words 'has been' the words 'have been' be substituted respectively."

Sir, the object of my amendment, as honourable Members will clearly see, is to place the States specified in Part III of the First Schedule on the same footing as the States specified in Part I of the Schedule so far as the reorganisation of the territory of any State is concerned. Dr. Ambedkar has told us why the amendment that he has proposed deals differently with the States mentioned in Part I and the States mentioned in Part III of the Schedule. He has expressed the opinion that the States mentioned in Part III of the Schedule are sovereign States and that they therefore enjoy a higher status than the provinces. Consequently, while the consent of the provinces is not necessary to a reorganisation of their territory, the consent of the States in Part III of the Schedule is required if their boundaries are to be altered in any way.

Now, I submit, Sir, that there are several provisions in the Draft Constitution that do not proceed on the theory just now outlined by Dr. Ambedkar. Take Article 226 for instance. This Article lays down that, when the Council of States has declared by the prescribed majority that it is necessary or expedient in the national interests that Parliament should make laws with respect to any matter enumerated in the State List specified in the Resolution, "it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter". It is clear from this provision that notwithstanding the sovereignty of the States mentioned in Part III of the Schedule, the Dominion Parliament can in certain circumstances legislate on subjects in regard to which legislative power has not been made over by these States to the Dominion Parliament in their Instruments of Accession. I know that this clause has been amended by the Drafting Committee. It has been provided that the declaration made by the Council of States in regard to the necessity or desirability of legislation of the kind mentioned in Article 226

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should be limited to three years at a time, but it can be renewed from time to time. But whatever the duration of the power that the Dominion Legislature will acquire under Article 226 may be, it is clear that notwithstanding any difference between the provinces and the Indian States, the Dominion Parliament will in a certain eventuality be able to legislate in regard to a subject in connection with which the Indian States have not parted with their own legislative power. I see no reason therefore why, proceeding on the principle on which Article 226 of the Draft proceeds, we should not provide that in the case of the reorganisation of territories too, the provinces and the Indian States should be placed on the same footing.

Article 226 does not provide the only instance in which the States and the provinces will be dealt with in the same manner, whatever the Instruments of Accession may say. For another illustration, I would ask the House to refer to Article 230 which deals with the implementation of international treaties, agreements and conventions. This article lays down that Parliament has power to make any law for any State or part thereof for implementing any treaty, agreement or convention with any other country or countries. Now, I could have understood, if Dr. Ambedkar's theory was to be acted upon consistently, the exclusion of the States specified in Part III of the Schedule from the operation of Article 230; but as a matter of fact this Article, if accepted by the House, will affect not merely the provinces or the States mentioned in Part I of the First Schedule but also the Indian States, i.e., the States mentioned in Part III of the Schedule. Whatever the Instruments of Accession may say, the Dominion Parliament will have the power to carry out international treaties, agreements and conventions, even though they may relate to subjects specified in the State List.

Sir, there is yet another example that may be given to show that the draft Constitution has, in an important matter, given power to Government to direct the States to act in a particular manner. I refer to Article 294 of the new Draft. Article 294 as previously drafted provided for minority representation in the Legislative Assemblies of the States specified in Part I of the First Schedule. The Article as drafted now compels the Assemblies of the States specified in Part III of the First Schedule also to reserve seats for the minority communities mentioned therein in the Legislative Assemblies of the States. This is another illustration of the manner in which the draft Constitution has imposed liabilities or responsibilities on the States mentioned in Part III of the first Schedule, notwithstanding what Dr. Ambedkar has said about their sovereign status.

Now it may be said, Sir, that the examples that I have given from the draft Constitution do not indicate that the Dominion Legislature will be able to exercise any power in regard to the States mentioned in Part III of the Schedule, notwithstanding anything to the contrary in the Instruments of Accession. It may be contended that the Instrument of Accession will be accepted only when the States accept the responsibilities mentioned in Articles 226, 230 and 294. If that is so, why cannot Government go further and require the States to agree to a re-organisation of their boundaries in such manner as might be considered desirable by the President in consultation with them? I am not asking that the States should have no voice in connection with matters relating to their territorial limits. All that I am asking for is that the consent of the States should not be necessary for a re-organisation of their territories. Consultation with them should be quite enough. Normally their legislatures should be consulted, but as we are not certain that every State has or will soon have a legislature, I was unable to table an amendment requiring that in the case of the States, too, the opinions of the legislatures concerned should be obtained, before any

action is taken. I do not see, why the previous consent of the States should be required in connection with Article 3 any more than it is required in connection with matters dealt with in Articles 226, 227 and 294. If Government desire to be consistent, it is incumbent on them, in my opinion, to accept the amendment that I have placed before the House. They cannot in conformity with the position taken up by them in the draft Constitution raise any objection on principle to the amendment that I have moved.

Sir, if my amendment is as I think free from all theoretical objections, can any practical grounds be urged for dealing with the States differently from the provinces? I do not think that there is any reason whatsoever why the States specified in Part III of the Schedule should have the permanent right to veto their territorial re-organisation, however necessary or desirable it may be in the public interest. There are unions, Sir, that are very small; their revenues are too limited to enable them to fulfil the duties that Governments have to shoulder in modern times. Is it desirable that these States should in utter disregard of the interests of their citizens always rule out all proposals relating to the re-organisation of their territories? If Government bear in mind the interests of the people, not merely in the States specified in Part I of the First Schedule but also of the States specified in Part III of the First Schedule, it is necessary for them to take power in their own hands to deal with the question of territorial re-organisation, whether it concerns the provinces or the Indian States, in any manner they like. If they fail to do so, they may justly be accused by the inhabitants of the States specified in Part III of the First Schedule of treating them in a step-motherly manner and leaving them to carve out their future as they best may with their own unaided resources. The whole principle on which the Draft Constitution is based is that in certain essential matters, the Central Government should have adequate powers to arrive at decisions and to execute them in the interests of the entire territory of India. My amendment, Sir, proceeds on the same basis and I submit that it would be inconsistent and unjust on the part of the Government if they were to reject my proposal merely on the ground that the States, though they will be compelled to bow to the wishes of the Indian Legislature in certain matters, should not be compelled to fall in line with the provinces in regard to the re-organisation of their territories, however urgent the matter may be.

Rai Bahadur Syamanandan Sahaya: Mr. Vice-President, Sir, the desire for the formation of provinces and the re-distribution of boundaries of existing provinces and States is, in my opinion, assuming the proportions of an epidemic. I feel that the two words "linguistic" and "cultural" have never been more misused than in recent times. In framing a legislation, and particularly a legislation of the type we are considering, it is necessary for us to decide what type of tendencies we should encourage and what types of tendencies we should not encourage. It is from this angle that I am making a few submissions in connection with this Article and the amendments before us.

I have no doubt that the amendment proposed by Dr. Ambedkar to his own draft has been guided by some such consideration that I have just placed before you and the House. The Draft as it stands only lays down that a Bill for re-distribution of boundaries or for re-naming a State would be introduced if the majority of the representatives of the territory expressed a desire to that effect. Of course, the language of the Draft as it stands is, in my opinion, ambiguous. Because, representatives of the territory, as it stands in the Draft, may mean the territory of the whole province, and the representatives of the entire province under the existing Draft may be required to give their opinion before legislation of the type could come into parliament. Since then, Dr. Ambedkar has moved an amendment which makes a distinction between the manner of ascertaining the views of the Provinces, and the States specified

[Rai Bahadur Syamanandan Sahaya]

in Part III of the First Schedule. Although I agree with one observation which has recently been made by Pandit Kunzru that there is no reason for this differentiation, I do not agree with the amendment which he has proposed. I feel that in both the cases of the Provinces and the Indian States, the words 'previous consent' should occur. In part (a) of the Proviso as suggested by Dr. Ambedkar, the words are: "where the proposal contained in the Bill affects the boundaries of any State or States for the time being specified in Part I of the First Schedule, the views of the legislature of the State or as the case may be of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President." This is, Sir, relating to the Provinces. When he comes to part (b) of this Proviso, concerning the States referred to in Part III of the First Schedule, (ii) the Indian States he says: "the previous consent of the State or as the case may be, of each of the States to the proposal has been obtained." Now, Sir, there is a difficulty which I envisage in this amendment. Supposing the re-distribution of boundaries concerns one State referred to in Part I of the First Schedule and another State referred to in Part III of the First Schedule, the result would be that in the case of the State referred to in Part I of the First Schedule the views of the Assembly will be ascertained and in the other case, the consent of the State will be required so that, if the State referred to in Part III of the First Schedule does not give consent, even though the province may agree, the re-distribution will not take place. I, therefore, feel with Pandit Kunzru that there should be no distinction between the two provisions; but instead of leaving the door very wide open in the provinces, I would submit that Dr. Ambedkar should consider if it would not be proper that the word 'consent' used in the case of States referred to Part I of the First Schedule also. I had an amendment in my name, being number 161 on the list. But, I feel that this amendment of Dr. Ambedkar will receive a great deal of support in this House and the amendment suggested by me in the Draft as it stands will have no chance. I therefore make a request that even at this late stage, if the mover has no objection, you may kindly accept an amendment to use the word "consent" for the word "views" in part (a) of the proviso as moved by Dr. Ambedkar.

Pandit Thakur Dass Bhargava (East Punjab: General): *[Mr. Vice-President, I have come here to express my views on this amendment and on the amendment moved by Prof. K. T. Shah. The amendment moved by Dr. Ambedkar on this Bill is more stringent than the original one.

The first point which I would like to submit is that every part of India should be given this facility, that, should it decide to secede from one part and to accede to another, then there should be no impediment in its way. India of ours, which was under the domination of the British, is sub-divided into unhomogeneous parts which have grown in haphazard manner. Not only there are districts, which want to secede from one province and to accede to another, but there are even Tahsils and parts comprising ten to twenty villages who want to secede from one part and to accede to other parts. This Article is sufficient to throttle them. For example, I would like to mention that Hariana, which is at present included in East Punjab, has been trying for the last forty years to get itself attached to areas whose language, customs and traditions are similar to its own and to get itself constituted into a separate province. But it could not succeed. The reason was that when this was discussed with U. P. leaders they at once stated that this was a device to parcel out U.P. They did not even consider whether it was a right thing to do or not. Pro-

* [ ] Translation of Hindustani speech.

vincialism and other ideas have become so ingrained in us that nobody is prepared to judge a thing on its own merits. I would like to know why in a part of Narnaul Area where there is not a single Sikh, teaching of Gurmukhi has been ordered. Today, in 1948, orders have been passed to teach Gurmukhi in an area where not a single Sikh resides and the result will be that children of that area will be forced to learn Gurmukhi. This Article, now sought to be moved, will make impossible the position of those leaderless areas, who wish to find a way out of this confusion. There will no attractive life to them, because according to this Article the right which should vest in every Member of Parliament is being given to the President. I would like to submit most respectfully that to-day, there are several provisions in the Government of India Act which debar a member from introducing a bill of a particular nature. Whenever I had wanted to introduce a Bill regarding joint Hindu family with the object of exempting the family from taxation, I found that it could not be done without prior sanction. Whenever I applied for sanction, that was refused. I am aware that the method of work of all the Governments is the same. The sanction of the President implies that Member, having the right to introduce a Bill, will not get the requisite sanction. Dr. Ambedkar has just said that this point was raised before him and that is why he has made the change that instead of Government introducing the Bills, Members also should be able to do so. But he has made the law more stringent than heretofore. If Government takes the responsibility for the bill, then it could get it passed. But since the giving of sanction will entirely depend on its recommendation, no moral influence will be there. If the President and the Cabinet do not want it and do not recommend it, then Parliament, not to talk of the individual, can do nothing. Recommendation means that the power of originating such a bill has been taken away from the Members. Therefore I submit that this provision is most undemocratic. Similarly, I would like to state that under article 34, which gives the discretion to Parliament to delegate any of its powers to the President or to anyone else, Parliament will not be competent to bring any legislation for changing the boundaries of provinces unless the President's recommendations is there. This is a right of a Member and it will be taken away by this provision. Since the war we have been hearing that everyone has got the right of self-determination. This provision takes away that right. If the people of an area want separation, then the right of self-determination should be given to them. Prof. K. T. Shah while elaborating his amendment has stated that he is afraid of referendum, but the proposal put forth by him strikes at the very root of self-determination. For example, if any part of a big province wants to break away then the only course before it is to bring the matter before the Members. But by doing so the very purpose would be defeated because the majority would always reject such a proposal. The principle, underlying the amendment of the learned Professor, is right but his suggestion is wrong. In my opinion a provision should be evolved whereby separation may be effected by holding a referendum of the people of the area desiring to separate. I know the result will be that many areas would like to go out and the provincial legislature would never agree to that. Therefore, there would be no use in taking the vote of the whole House as small areas will not get a vote. In the old Government of India Act a similar provision existed. In 1946, I had tabled a resolution in the Assembly for the appointment of a Commission for redistribution, but unfortunately it could not be taken up. A proposal was also put before the Cabinet Mission for appointing a Commission for the redistribution of the provinces. Now a linguistic commission has been appointed. I hear attempts are being made to shelve its activities. I would like the Congress Government to respect the wishes of the areas, which desire to separate from any province and that no hurdles are placed in their way; on the other hand, all legal aid should be given for the formation of a new province. But so long this Section exists areas comprising even two or four districts, will not be heard at all. The previous condition that only the vote of the representatives of the territory, which wants separa-

[Pandit Thakur Dass Bhargava]

tion, should be taken, has now been deleted. Now it is proposed that the vote of the legislature should be taken. No provincial legislature would agree to the separation of a part, and the representatives of the affected area will be so influenced that they would not be able to give free expression to their views. Therefore, holding of a referendum is necessary. Parliament, and not the President, should have the right to determine the matter after taking into account the opinion of the people of the area concerned and of the vote of the provincial legislature. It is therefore necessary that every Member of the Parliament should have the right to give notice of such a bill. Views of the provincial legislature may be taken but the changes should be effected in accordance with the wishes of the people of the area, who want separation. If this is not done then the principle of self-determination would be nowhere. We used to hear that after the attainment of Swaraj the right of self-determination would be given to all. This Section will put an end to that right, and no justice would be done to the people. I belong to a small district, Hissar. It is an epitome of India. Boundaries of many provinces meet in Hissar, e.g., Jind. Jind State having 88 per cent Hindu population, and only 1 per cent Sikhs has been included in the Eastern Panjab States. Formerly, Delhi was a part of U.P. Six districts of Ambala Division were also included in it. In 1857, Lawrence, who had annexed this area, was made Governor of the Punjab and so this territory was included in the Punjab Province. For a very long time we tried that Delhi and Ambala Division be separated from the Punjab, because this territory had nothing in common with the Panjab, but our efforts bore no fruit. Now, after the partition it remains to be seen as to what would happen to this area; with whom will Delhi and Ambala Division be tagged and whether Punjabi or Hindi would be its language. Now, we hear that we are to be included in a Punjabi-speaking province. Our children, who have nothing to do with Punjabi language, will have perforce to read Punjabi. Nothing could be more cruel than this. This provision gives no freedom. The Constitution is being forged to enable people of every part of the country to live in peace, and to evolve an organic life for themselves. But under Article 3 and this amendment, each and every part would not be able to attain freedom for itself. Therefore, I say that the provision is undemocratic, and that it restricts the rights of the Parliament. Views of the legislatures may be invited, and may be taken into consideration; but the determining factor should be the vote of the people of the area, which wants to separate. For this, there is no provision under the present law. With these words, I would like to emphasise that it should be so amended that even the smallest areas in the country may be able to achieve full freedom.

Shri Rohini Kumar Chaudhari (Assam: General): Sir, it is my misfortune to have to oppose the amendments moved by the two stalwart Members of this House, namely, Prof. Shah and Pandit Kunzru. I oppose them not because I like them less, but because I like Dr. Ambedkar's amendment more, as it meets the present situation very well. Sir, I do not object to Prof. Shah's amendment on the ground of its wording or its unsatisfactory character or to the word 'originate'. I entirely agree with him that no such motion should be considered in any House if the State which is affected is not at all in favour of it. I say that if there is not a single Member of the legislature in a State who countenances the idea of separation, it is unthinkable that the Central Legislature would take up that matter. To that extent, I agree with Prof. Shah. But I am opposed to his amendment on the ground that it is very restrictive. It does not allow a motion to be moved by any other authority or by a private Member other than the Government of India itself. On that point I consider that this amendment should be opposed.

Then coming to the amendment of Pandit Kunzru, I consider that his amendment lays down a rather dangerous principle, dangerous at this stage. It

smacks of a repetition of Dalhousie's annexation policy. It gives to the Central Legislature the power to alter name of a State, to change, increase or diminish the boundaries of a State, without any previous consent of that State. We have thus far proceeded very cautiously in the matter of the States—thanks to Sardar Patel. We have not asked for any merger or accession without the consent of the State itself, except probably in the case of the police action in Hyderabad—and we do not know how it will end after all. So, what I say is, if at this stage we give the idea to the States that it will be open to the majority of the Central Legislature at any moment they think fit to take one part of a State and tag it on to another province, or to saddle it with an unprofitable part of a province, that will be a most unwise thing and that will put the States on their guard, and that will end the amity with which they are now coming in and joining us. Certainly, I agree that some powers of interference have been reserved in our Constitution by articles 226 and 230. But they also show how cautiously we are proceeding in this matter. After all, you must not ask your host to give up his bed for you, merely because he has allowed you shelter. Merely because the States now are showing their inclination to come and join us in all matters, we must not ask them to agree to a proposition whereby you will be able to alter their name, diminish their area, or change their boundary or do anything of that kind, without their consent.

With these words, I support the amendment moved by the honourable Dr. Ambedkar. I would only ask him, or anyone in the House to tell me whether the word 'President' means that the recommendation of the President would be given with the consent of the Government, or whether the President can independently act in exercise of his discretion. The word 'discretion' is not used, of course, but I would like to know if he can exercise his discretion in allowing a motion of that kind. I consider that it will be more reasonable to allow the President to exercise his discretion, rather than that he should be guided by the opinion of his Government in this matter. There are other provisions in the Draft Constitution where the President undoubtedly uses his discretion, without consulting the Government or the Central Legislature, though the word 'discretion' has not been used. For instance, in the matter of remission of sentences, the President will never be called on to take the consent of his Ministry in remitting a sentence or refusing to remit a sentence. All the same, that Article is there, without the addition of the word 'discretion'. Therefore, I consider that the interpretation which Dr. Ambedkar puts is correct, and when the word 'President' stands alone, it means he will be able to exercise discretion in such matters.

Shri Gopikrishna Vijayavargiya [United State of Gwalior—Indore—Malwa (Madhya Bharat)]: Mr. Vice-President, Sir, I am not going to speak against or for any of these motions. I have only to make certain observations, as I come from an Indian State and want to give expression to the feelings of the people of the States in this matter. I think, Sir, that the people of the States do not want any discrimination in the matter of consent or no consent (*Hear, Hear*). In fact, our wish is that the States must be put on the same level as the Provinces (*Hear, hear*), and therefore, there is no question of taking the consent of the States. In fact, I would be very glad if this article could have been amended in some such way, at least, to the effect that the States Legislatures might be consulted. I think, mere consultation would be sufficient in the matter of the States also as it is in connection with the Provinces. I think, Sir, the question of the sovereignty of the Rulers or of the States should not be brought up. I think, Sir Stafford Cripps when he came to India also gave a definition of the States and thought that the Rulers are the States, and now some such anomaly may be created again. I say the wish of the States' people is that there should not be any discrimination in favour of the

[Shri Gopikrishna Vijayavargiya]

States, and consent is not necessary. You might put the States on the same level as the Provinces. The people of the States have always contested the sovereignty of the rulers—they do not accept the sovereignty of the rulers. Most of the States have been tiny; now they have merged with some of the Units but the question would crop up again if sovereignty were given to the rulers. The people of the States are fully the kith and kin of the people of the Provinces—they are the same as those in the Provinces. We do not like to further fragment our country on the same old lines. The distinction of the Indian States and the Provinces is still being maintained, but now we think that this distinction must go. The House must consider anything that may help in the States being brought on a par with the Provinces. I would have liked if this whole Assembly had been delayed for some time, or postponed, so as to bring the States on a par in all affairs with the Provinces. I think the States Ministry ought to have done that a little earlier. This is really worth while doing, because we are making a Constitution and it will be very difficult to change it afterwards. I therefore think that this discrimination must go. I request Dr. Ambedkar to find out some way for this. In this matter I voice the feelings of the people of the States. I am not speaking on any particular amendment.

Shri M. Ananthasayanam Ayyangar: Sir, the question may now be put.

Mr. Vice-President: What is the feeling of the House?

Shri H. V. Kamath: No, no. This is a very important matter.

Mr. Vice-President: Prof. Shibbanlal Saksena.

Prof. Shibban Lal Saksena: Mr. Vice-President, Sir, this is a fundamental matter, and the amendment tabled by Dr. Ambedkar is a very important one. In his explanation he has said that his amendment enables any Member to give notice of private Bills for changing boundaries, and on receipt of that Bill the President will take certain steps to ascertain the opinion of the Legislature concerned, and then on the advice of the Prime Minister recommend that the Bill be brought up. My friend Shri Thakur Dass Bhargava just now said that this amendment is really far more stringent than the original clause. I do not agree with that view. Under the original clause, only the Government of India could have brought such a Bill, whereas under this amendment, on the recommendation of the President any Member can bring it. The only condition is this, namely, that the President after he receives notice of such a motion from any Member will try to take the opinion of the area concerned and then, of course after consulting his Ministry, give his recommendation for moving the Bill or otherwise. But if the original clause had continued, no private Bill could have come; under the new amendment a private Bill can come, with the limitation I have already described. I personally think this is a much better form than the original clause. Probably Shri Thakur Dass Bhargava wants to go much further. He wants that any private Member should have liberty to bring in the House a Bill asking for the change of boundaries. Change of boundaries is a very vital matter and it should not be made so easy that everyday any Member shall bring forward motions for changing the boundaries and the Legislature should discuss that question. It will create unnecessary heat and create friction which I think should be avoided. I think that so far as the language of the amendment is concerned it meets the wishes of Shri Thakur Dass Bhargava. Of course the Member will have to secure the recommendation of the President, and probably if the President feels that the people of an area—the majority of them—are of the opinion that they would be happier if they go to some other State or Province, he would advise the Prime Minister, and probably the Prime

Minister also will agree with him that the motion should be allowed and that Parliament should be allowed to discuss the question. I think that gives full liberty and opportunity to every area which desires a change of boundaries.

There is one aspect of this amendment which is really a very unfortunate aspect, to which Dr. Ambedkar had given vent in his lucid address in the beginning when he said that in this Constitution we have been forced to treat the Indian States on a separate footing from the Provinces. In the First Schedule, the Indian States have been put in Part III while the Provinces have been put in Part I. And here in this Article 3, Part I and Part III are separately treated. Whereas in respect of the States under Part I their Legislatures will only be *consulted*, in respect of the States under Part III their consent will be *required*. Sir, I had given notice of amendments which really sought to do away with this distinction, and I am sure that our learned Dr. Ambedkar also wishes the same thing from the bottom of his heart. There should be no difference between a Province and a State and we all wish that this distinction should disappear. My honourable friend Pandit Kunzru has also argued that there should be no differentiation at least in this matter namely about *consent* and *consultation*. He wants that the States should only be consulted just like the Provinces. He has also pointed out Sections in the Draft Constitution where the States have been asked to fall in line with the Provinces, and I think he has made out a very good case. I am very much in agreement with all that he said. But I personally feel that in this matter our leader, the States Minister, Sardar Patel, feels that it will be a breach of faith if we made provisions in the Constitution without securing the prior agreement of the Indian States also. He has promised us that he will make his efforts to get their consent and before the Bill goes into third reading he will try to have this. We all very much wish him success in his efforts.

Shri H. V. Kamath: On a point of order. Sardar Patel has made no statement on this issue and I do not know if my friend is in order in referring to any statement made by him in private.

Prof. Shibban Lal Saksena: I am only expressing his wish—he has made no statement like that—I only say that he will make his efforts and that before the Bill comes up for third reading he would be able to secure their consent. If he does not, then of course we will have to fall back on our own resources. But by making a provision like this in the Constitution we are making it very difficult for any change afterwards. When it becomes part of the Constitution, a two-third majority will be required for making any change and it will be very difficult. I suggest that some way should be found out for this. If before the third reading is passed this consent is not achieved, then this Article should at least be changeable not by a two-third majority but by a simple majority. Or if the learned Doctor can make the amendment that this part will not be treated as a change in the Constitution, I think our difficulty may be met. The Honourable Member who preceded me also said that the people of the States do want that the States should fall in line with the Provinces. It is a matter of fundamental importance that the States should not remain something separate, having separate sovereignty. There should be only one sovereignty and that should be the sovereignty of the Republic; and the States should be part of the one single Sovereign Republic. I therefore hope that the Princes themselves will agree to this patriotic consummation and if they do not, I hope there will be a provision that when the Indian States people come into their own, they will be able to make the required changes. But I hope that the Constitution will not lay down the two-thirds majority. I do hope that if a simple majority is laid down for a change in this clause, when the Indian States people come into power in their Legislatures they will see

[Prof. Shibban Lal Saksena]

that they are governed on the same lines as the Provinces; but so long as that is not done, we will not be wise in making a breach of faith with those Indian States with whom we have made agreements. Sir, I support the amendment.

Shri L. Krishnaswami Bharathi (Madras: General): Mr. Vice-President, Sir, I fully support Dr. Ambedkar's amendment and the principle underlying it. He said that in the case of Provinces, that is Part I States, mere consultation is enough, in the case of Indian States previous consent is necessary. But the reason that he gave for this distinction is unacceptable and I have no doubt that the House will entirely repudiate that. If I heard him aright, Sir, he said that the States are sovereign. This is a very dangerous doctrine at this time of the day to lay down; two States particularly, Travancore at one stage, and Hyderabad, till recently, claimed that they were Sovereign, and we have all along been repudiating that position and declaring that the States are not at all sovereign in any accepted sense of the word, and that was the fundamental issue at the United Nations Organisation Council at Paris.

Sir, I think it may be his personal view. If we accept his amendment it is not because of that argument. I entirely agree that it is very necessary to make this distinction. We want to go slow, and the States are governed by the Instruments of Accession. We shall certainly get the consent of the people when it is necessary. But to say that the States are sovereign is laying down a dangerous doctrine and if this House accepts this amendment, it is not because of the reason that he advocates but because of other weighty considerations.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I stand here to voice what I think to be the universal feeling of those of us who happen to come from that part of India which hitherto has been called as the Indian States. When we read this amendment which has been proposed to the Draft Constitution by the Drafting Committee, two points emerge. Firstly, that the necessity is there for a provision in the Constitution under which the re-distribution, readjustment or re-alignment of the boundaries of the various units of the Union, may be made whenever needed. Secondly, that in this matter there is some distinction provided in this provision between the Indian States of the present day on the one hand and the Provinces on the other. I may respectfully submit that the distinction in the wordings of the provision contained in provisos (a) and (b) of the amendment has not made us who come from the States any whit happy. On the other hand, we feel a little smaller and we feel as if full justice has not been done. We know that this word "State" has been outrageously interpreted ever since the day of the first Round Table Conference. We have seen that from the days of the Round Table Conference to the declaration of August 8 by Lord Linlithgow in 1940, again from that date to the Cripps Proposals and from the Cripps Proposals to the Cabinet Mission, and even after that during the deliberations of the Negotiating Committee, there has always been the tendency, I should say the definiteness, to interpret the word "State" as NOT the people of the State but "the Ruler" of the State. I am sure that when I voice my protest against this interpretation, I voice the universal feeling of the people of the States. May be that our sacrifices in the struggle for independence have been considered by some to be somewhat smaller in magnitude but that is no reason why we should be deprived of equal rights and opportunities and of the feeling that we are one with the country, that we are not any whit different from the rest of the people of the country. That is why I say we are not happy over this distinction.

It has been argued before us—it is always, so to say, used as a militant argument against us—that because of the Covenants that have been signed

between the Indian Princes and the States Ministry, and also because duly constituted Legislatures are not yet existing in many of the States or States Unions, this distinction in the proviso cannot be avoided. But I think that things are now different. Time was when sovereignty vested in the Princes, but it is a hard fact today that that sovereignty has been transferred to the people in all cases, I should rather say invariably. There might still be an exception or two but that exception too will soon disappear and if that is not going to disappear willingly it shall have to take a lesson from what has happened in Hyderabad. The united will and action of the people of the Indian Union will bring round the recalcitrant elements, if any, as also those who are not going to fall in line with the tendencies of the rest of the country. I repeat that sovereignty today vests in the people and so it vests in this Constituent Assembly. The sovereignty of the Constituent Assembly is unqualified, and undiluted in respect of any and every part of the Indian Union. If there be anyone who objects to that sovereignty or who casts any doubt about that sovereignty, the people of the States are as much behind this august Assembly as the people of the rest of the country for the defence and support of—and are prepared for any sacrifices also if they be needed for the sake of—the sovereignty of the Assembly. There should, therefore, be no difference whatsoever. I suggest that it would have been better that this amendment also might have been allowed to stand over because the matter is of urgent importance, or shall I say, of utmost importance to the people of the Indian States. Even if it be supposed that this amendment has got to be taken up, my suggestion is that it should be taken up at the time when all other controversial points are decided by this Assembly. In case my suggestion does not find favour and the amendment is pursued, then it will be accepted by the representatives of the States in this Assembly with the mental reservations which I have just referred to.

I may conclude by saying that so far as this Assembly is concerned, we have been committed to two definite principles: the principle of unification and of democratization of the entire Union and as such it cannot be contemplated by any provision of the Draft Constitution that there can be some sort of a different treatment between the Provinces and the States. The word "State" has been defined in Article 7 of the Draft Constitution as under:

"In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Governmnet and the Legislature of each of the States and all local or other authorities within the territory of India."

The word that has been used is "includes" that means there might be something more which may come within the purview of the word "State". I think the word "Ruler" may be contemplated there. That is why we are not happy over the use of the word "State" in proviso (b) to the amendment proposed by the Drafting Committee itself.

Sir, I respectfully submit that my suggestions and remarks will be taken in the light they are made and will be considered.

Chaudhari Ranbir Singh (East Punjab: General): *[Mr. President, while supporting Dr. Ambedkar's amendment I cannot help remarking that the amendment undoubtedly provides some freedom to the members of the Central Legislative to move private bills as also some freedom and opportunity to the minorities, based on religion or caste, to have their say in the matter of the formation of any province of their choice. But I want to submit in this connection that the aim of our country being the establishment of a secular State our non-religious Government should follow the rule that all such reservations

* [ ] Translation of Hindustani speech.

[Chaudhari Ranbir Singh]

based on religion or community should be abolished. On the other hand I fear that if this suggestion is accepted, a community which is in a majority in a territory but is in minority in a State will have neither the same weight nor the same opportunities as it had under the previous provisions.]

Shri H. R. Guruv Reddi (Mysore): May I suggest, Sir, that further discussion may be continued tomorrow?

Mr. Vice-President: The House stands adjourned till 10 A.M. on Thursday the 18th November 1948.

The Assembly then adjourned till Ten of the Clock on Thursday, the 18th November 1948.

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Shri H. V. Kamath (C.P. and Berar: General): Mr. Vice-President, Sir, I hope that the former Indian States will not derive undue encouragement from the doctrine of sovereignty which my honourable friend, Dr. Ambedkar, propounded yesterday. I do not know whether he meant that their status is something like *Imperium in Imperio*. I think it is a dangerous doctrine to propound at this time of the day. If we turn to Part III of the First Schedule, we will find there are two divisions in this Part, Division A and Division B. Many of these States have already merged themselves in the adjacent Indian Provinces. Some have integrated among themselves and formed bigger unions and some are still single States. In terms of the amendment moved by my honourable friend, Dr. Ambedkar, sub-clause (b) of the proposed amendment lays down that where such a proposal affects the boundaries or the name of any state or states for the time being specified in Part III of the First Schedule, it means to say that it refers to all States mentioned in Part III of the First Schedule, whether they are single States, whether they are integrated States or whether they are merged States. I wonder whether for little principalities which have merged themselves in the provinces, whether for these States too this doctrine of sovereignty will be extended and whether for the unions of these States the consent of each of the States will have to be obtained. Apart from that, whether the single States should be regarded as sovereign in this regard is to be considered. I can understand if Dr. Ambedkar says that in terms of the Instrument of Accession of these States to the Union of India, so far as this matter is concerned, you will have to obtain their consent, but I trust, Sir, that within the next two or three months at the end of which we will adopt this Constitution, by that time, the hope that Dr. Ambedkar expressed in his speech on the motion for the consideration of the Draft Constitution, that the States will fall in line with the provinces in all respects, will be realized; and I have no doubt that the strenuous efforts of Sardar Patel in this regard will bear fruit, and that by the time we adopt this Constitution, there will be no distinction left between the States and the provinces. In view of this consideration, the amendment of my honourable friend, Pandit Kunzru has come force. If this equal status of the various provinces and States does not come about by the time the constitution is adopted, then we have got to think why we should attach undue importance to the so-called sovereignty of the States; if at all, it is a nominal sovereignty that the rulers of the States have got in this regard. I am inclined to agree, therefore, with Pandit Kunzru's argument that if the States do become equal in status to the provinces, even then we should not go beyond obtaining the views of the rulers of the States or the legislatures of the States, whatever the case may be. It is understood when we obtain the views of the rulers of the States, or the Rajpramukhs or the legislatures of the States, if their views are in conflict with the proposal, then that proposal will not come up. So also if the provinces are consulted and if their views are against such a proposal, then that proposal will not be made in the Union Parliament. So, I do not understand why this distinction should be made at all. If you consult a certain authority or a certain Government, it means that if that Government is opposed to the proposal, that proposal will not be made in the Union Parliament. Therefore, it is desirable, that at this time, when Sardar Patel has been telling us for the last so many months that we will abolish all distinctions between the provinces and States and that the provinces shall be brought into line with the States, if you want merely to consult the provinces, just consult the States also, and if you want to get the consent of the States, certainly get the consent of the Provincial Governments also.

Lastly, Sir, I would request Dr. Ambedkar to consider this matter from this aspect, namely, in view of the hope expressed in his first speech in the Assembly that the States should be brought into line with the provinces at the earliest possible date and considering the several articles in the Constitution which Pandit Kunzru pointed out yesterday, seeking to abolish such distinctions,

[Shri H. V. Kamath]

whether in this regard also this distinction should not be abolished. I hope, Sir, that at a very early date, we shall administer the *coup de grace*, put an end to the doctrine of sovereignty which has been propounded for the States, so far as this matter is concerned.

Shri R. K. Sidhwa: (C.P. & Berar: General): Mr. Vice-President, Sir, several members have stated that this amendment deprives the right of a member to move a Bill to the effect mentioned in this amendment. I am rather surprised at the argument advanced by certain members to this effect. Sir, I yield to none in my desire to protect the privileges and rights of members to move motions or Bills in a legislature. But, while the amendment of Dr. Ambedkar says that the consent of the President should be obtained, it should not be understood that it deprives the member of any right. By way of an illustration, I would say, that every citizen has a right to walk on the highway. Any person can walk as he likes. But, when he walks, he has to be governed by certain elementary rules, so that he may not cause obstruction in the road, or cause accidents or death to others. If a man has to drive a motor car or a vehicle, he has to obtain a license. He is governed by certain elementary rules; if the elementary rules are not followed, there will be chaos. To state that the rights of members have been deprived by this motion of Dr. Ambedkar is incorrect. On the contrary, nowhere is it stated that no member can bring forward a Bill. This is a very important measure and therefore it has been stated that the President should be consulted and his recommendation taken. This is to the benefit and advantage of those who get the opinion of the President, which would mean, the Government of India. They would be armed with very great strength behind them in moving such a proposition.

It has been argued by my honourable friend, Mr. Bhargava, yesterday that some of the minor provinces which would like to cut off from the major provinces, would have no right to do so under this amendment. I said yesterday and I repeat today that if a majority does not want a particular territory to be divided, it would be unfair for a minority to encroach upon the rights of the majority. If you want the majority to be ruled over by the minority, then it is autocracy; democracy means rule of the majority. I therefore contend that the amendment that has been proposed is very salutary. It does not deprive any member of his right; on the contrary, I feel that when the recommendation of the President is taken on an important measure like this, his case is greatly strengthened.

Sir, only one point about Pandit Kunzru's amendment. I am really unable to understand why a difference has been made between the States in Part I of the First Schedule, that is provinces, and the States in Part III of the First Schedule. In one case it is stated that the views of the legislature should be obtained and in the other case, i.e., the States, he has stated that the previous consent should be obtained. View means "observations", consent means "unanimity and decision on a matter". You are aware, Sir, that this Constitution was sent to various provinces and the various provinces discussed them in their legislatures and their views have been sent to this House and we have been supplied with copies. That is the right course. No decision has been taken in any legislature. The legislatures in Bihar, Bengal, Bombay, all have discussed the matter and copies of the printed proceedings have been supplied to us. But, consent means consent of the State. I do not agree with those who say that consent means the consent of the Ruler. Consent means consent of the legislature of the State. State does not mean the Ruler. Just as the President does not mean himself personally, but the Government of India, if the Ruler gives consent, he has to take the consent of the legislature of the State. I want to know why in the case of the States, it is stated that consent should be obtained, and I would

like Dr. Ambedkar to enlighten the House as to why this difference has been made between States and Provinces. I feel that in the case of the States, it is very necessary that their views should be obtained rather than consent. I therefore, think, that unless there are valid reasons,—the valid reasons may be that the Ruler has to be consulted, the States having come into the Union by compromise—no impediment could exist or no compromise question arises. The rights of the people of the States are identical with the rights of the people of the provinces. The zeal of the people of the States is so great that they want to come into the Union straightaway and merge with the various provinces. As we are told that without consent or compromise it is not desirable, we yield to that. But, we expect that on the question of obtaining their opinion, a similar procedure should prevail as in the case of the provinces.

With these observations, I support the amendment strongly and I hope Dr. Ambedkar will clear the point why a differentiation has been made in the case of the States, why he has stated that the views of the legislature should be ascertained in the case of the provinces, whereas in the case of the States he has stated that their previous consent should be obtained.

Mr. Vice-President: Dr. Ambedkar.

An Honourable Member: The question be now put, Sir.

Maulana Hasrat Mohani: (United Provinces: Muslim): Sir, I rise to a point of order. Dr. Ambedkar has only moved an amendment and therefore, I submit, he has not got any right of reply. I have got a ruling of this House in which it is said definitely.....

Shri R. K. Sidhwa: I understand the whole article is under discussion. If the article is under discussion, Dr. Ambedkar has a right of reply.

Maulana Hasrat Mohani: Dr. Ambedkar has already spoken; he has no right to make any further speech.

Mr. Vice-President: Please address the Chair.

Maulana Hasrat Mohani: Sir, I beg to point out, that the Ruling says—I am quoting from the printed proceedings of this House—the mover of an amendment has no right of reply. He cannot make a second speech.

Mr. Vice-President: I hold that the Article as well as the amendment are under discussion. Dr. Ambedkar.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): Sir, the mover has a right of reply.

Mr. Vice-President That makes my position stronger.

The Honourable Shri Ghanshyam Singh Gupta: What I mean to say, Sir, is this. There are two sets of rules, one, rules of procedure on the legislative side and the second, rules of procedure on the constitutional side. The rules of procedure on the legislative side do say that the mover of an amendment shall have no right to reply. That rule has been purposely omitted in the rules of procedure on our constitutional side. Therefore, I submit that every mover of an amendment has got a right of reply.

Mr. Vice-President: You do not object to Dr. Ambedkar replying?

The Honourable Shri Ghanshyam Singh Gupta: Not only do I not object, want to establish this practice that the mover of an amendment has a of reply, because our rules differ widely from the rules that have been d for the legislative side.

Mr. Vice-President: We shall decide that later on after Dr. Ambedkar has made his reply.

Shri Lakshminarayan Sahu: (Orissa: General): Sir, there is an amendment in my name.

Mr. Vice-President: Kindly take your seat, Mr. Sahu. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): The amendment moved by my friend Mr. Kunzru is an amendment which carries a great deal of my sympathy but unfortunately in the circumstances in which we stand, I am not in a position to accept the same. The arguments urged by my friend in supporting his amendment was that when I had stated originally in moving my amendment was inconsistent with some of the other clauses or articles contained in the Constitution. He said that the plea I had urged in justification of the distinction between the provinces and the States in the matter of the provisions contained in article 3 was inconsistent with Articles 226, 230 and 294. Now my submission is this that there is no inconsistency whatever in the plea I have urged in supporting a distinction between the provinces and the States and the various articles to which he has made reference.

With regard to Article 226 which gives power to the Central Legislature to pass legislation on matters included in Provincial list, my submission is this that that authority will be exercised by Parliament by virtue of a Resolution passed by two-third majority of the Upper Legislature. He will realize that the Upper House or Council of States will include representatives of the States as much as the representatives of the Provinces. They will undoubtedly participate in the proceedings of that particular Resolution which seeks to confer power upon Parliament to legislate on the matters included in that Resolution. Consequently it is hardly fair to say that Article 226 automatically usurps the sovereignty of the Indian States. It is really a measure which confers sovereignty by a special resolution passed by the Upper Chamber in which the States are fully represented. That is therefore no illustration of inconsistency at all.

With regard to Article 230, my submission is also the same. My learned friend will remember that the Indian States apart from what they do after the Constitution is passed have at any rate for the present, acceded on the bas's of three subjects and one of the subjects is Foreign Affairs. Obviously implementation of the treaty is nothing but an exercise of the power conferred upon the Central Parliament for implementation of the treaty which is the subject matter covered by Foreign Affairs. Therefore that again cannot be said to be an usurpation of their sovereignty rights.

With regard to 294 which deals with the extension of the provisions of the protection of minorities in Indian States, that undoubtedly may appear for the moment to be a sort of encroachment of their sovereignty but it is nothing of the kind. It is merely one of the proposals which we shall be making to the Indian States that when they seek admission to the Indian Union they will have to accept Article 294. I might say that this extension was made by the Drafting Committee because the Drafting Committee heard that the Constituent Assemblies of some of the Indian States were making provisions in this regard so diverse and so alarming that the Drafting Committee thought it best to lay down what sort of arrangements for minority protection the Union Government will accept and what it will not accept.

Now, Sir, with regard to this question of differenciation between the Indian States and the Provinces of British India a great lot has been said, and I quite realise that the House is terribly excited over the distinction that the Constitution seeks to make but I should like to tell the House two things. One is this that we are at the present moment bound by the terms of agreement arrived at between the two Negotiating Committees, one appointed by the Indian Constituent Assembly representing the British provinces and the other representatives nominated by the Indian States for the purpose of arriving

certain basis for drafting a common constitution which would cover both parts. Now I do not wish to go into the details of the reports made by the Negotiating Committees but if my honourable Friend Pandit Kunzru would refresh his mind by going over the report of that committee, he will find that here is a distinct provision that nothing in the Negotiating Committee report will be understood to permit the Indian Union to encroach upon the territories of the Indian States. My submission is, if that is an understanding—I do not mean to say a contract or agreement—arrived at between the two parties, at this stage we would do well in respecting that understanding. I would like to point out another thing,—another article in the Constitution to which I am sorry to say my friend Mr. Kunzru has made no reference—that is Article 212 which is a very important article, and I should like to explain what exactly are the possibilities provided by the Indian Draft Constitution with regard to the Indian States. Honourable members must have seen that Article 3 provides for the admission of the Indian States on the basis of such Instrument of Accession as may be executed by the Indian States in favour of the Indian Union. When a State as such is coming into the Indian Union, its position *vis-a-vis* the Central Government and *vis-a-vis* the provinces would and must be regulated by the terms cotained in the Instrument of Accession but the Instrument of Accession is not the only method of bringing the Indian States into the Indian Constitution. There is another and a very important article in the Constitution which is 212. 212 provides that any Ruler of an Indian State may transfer the whole of his sovereignty to the Indian Union with respect to his particular State. When the whole of the sovereignty is transferred under the provisions of 212, the territory of that particular ruler becomes so to say the territory of India, with complete sovereignty vested in the Indian Union. Power is then given under Article 212 so that that particular territory the sovereignty over which has been fully transferred by the ruler to the Indian Union can then be governed as a province of India in which case Part II of the Constitution which defines the Constitution of the Indian provinces will automatically apply to that Indian State or it may be administered as a Centrally Administered area; so that the President and the Central Parliament will have the fullest authority to devise any form of administration for that particular territory. Consequently my submission to the House is that there is no necessity —if I may use an expression—to be hysterical over this subject. If we have a little patience I have not the least doubt about it that our Minister for the Indian States, who has done so much to reduce the chaos that existed before we started on the making of our Constitution, will exercise the *de facto* of paramountcy which the Union Government has obtained and reduce the chaos further and bring about an order either by inducing the Indian States to accept the same provisions which we have applied to Indian States or to follow the provisions of section 212 and surrender to us complete sovereignty so that the Indian Union may be able to deal with the Indian States in the same way in which it is able to deal with the provinces.

For the present I submit we shall be acting wisely by respecting the agreement which has been arrived at by the two Negotiating Committees and following it up until by further agreement we are in a position to change the basis rather with goodwill peace and honour to both sides. Sir, I oppose the amendment. (*Cheers*).

Mr. Vice-President: I shall now put Amendment No. 150, as modified by the amendment of Pandit H. N. Kunzru to vote. (*Interruptions*). Kindly permit me to conduct the proceedings in the manner I wish it to be conducted.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Sir, I do not know how you are putting the amendment as modified by the amendment of Pandit Kunzru to the vote of the House. I think, first of all you might put the amendment proposed by Pandit Kunzru to vote, and then take the other amendment; to take it up at the outset and combine the two will not be quite in the proper order.

Mr. Vice-President: Please come to the mike.

The Honourable Pandit Govind Ballabh Pant: My submission is this. This amendment of Dr. Ambedkar as modified by the amendment of Dr. Kunzru is being put to vote, and that is exactly what I wish you not to do. I suggest that you might be pleased to put to vote first the amendment of Dr. Kunzru. If it is accepted, then you have to put the modified amendment to vote. If it is rejected, then you have to put the original amendment of Dr. Ambedkar to vote. To combine the two together will be to create some confusion.

Shri H. V. Kamath: What about amendment No. 149 of Prof. K. T. Shah?

Mr. Vice-President: If the amendment of Dr. Ambedkar is carried that will automatically rule out the amendment of Prof. K. T. Shah. That is why I am taking Dr. Ambedkar's amendment, that being the easier course No. 149 seeks for complete substitution.

We shall then first of all vote on the amendment of Pandit Kunzru.

The Honourable Shri Ghanshyam Singh Gupta: Sir, I should like to submit an important point. I think the Honourable Pandit Kunzru has got the right to reply. The ordinary rule is that one who initiates a debate has the right to reply, if it is not curtailed. The Rules of Procedure and Conduct of Business of this House on the legislative side, Rule 111 says that.....

Mr. Vice-President: Does that rule apply here?

The Honourable Shri Ghanshyam Singh Gupta: No, because we have not got any corresponding rule, and the reason is obvious. Here we are dealing with a very important matter in which the mover of an amendment who really brings a substantial proposition before the House may have to say much, after he hears the debate in the House. Therefore, the very fact that in our Rules of Procedure there is no rule corresponding to Rule No. 111 shows very clearly that the mover of the amendment to the Constitution has the right to reply. And that is but natural, because the matter being of very vital importance, the ordinary rules of debate must govern our procedure also. That is my submission.

Shri R. K. Sidhwa: Sir, I feel that the Honourable Pandit Kunzru has no right of reply in connection with his amendment. My reason is that the rule which has been pointed out by my friend Shri Ghanshyam Singh Gupta says that the mover of an amendment has no right of reply. He argues that in our Assembly there is no rule, and so we have to say that the mover has the right to reply. On the contrary, I have not heard in any important legislature or assembly such a right given. When there is no rule for this Assembly, then the rules of the Constituent Assembly (Legislative) should prevail, that being the highest body in our country for legislative purposes. We in this Assembly have no rules to this effect. Therefore, the second-highest, *i.e.*, the Legislative Assembly rules should prevail. I feel that this is a very important matter. We must be governed by certain rules. I have not heard of any important legislature or other body or even local bodies where the mover of an amendment has been given the right to reply. I submit, therefore, that the contention and the argument advanced by Mr. Gupta, do not hold water, for the simple reason that we are governed by another and a parallel body which says the mover has no right of reply.

The Honourable Shri Purushottam Das Tandon (United Provinces: General): Sir, my friend Mr. Sidhwa has been too bold. He has touched a subject of which, you will permit me to say, he has not full knowledge. He has said he does not know of any important legislature which gives the

mover of an amendment the right to reply. I submit, Sir, the United Provinces is a sufficiently important province in the country, and I can tell you, that the Legislative Assembly of the United Provinces has a definite and specific rule to the effect that the mover of an amendment has the right of reply. (Hear, hear). This is in regard to bills. The mover of an amendment to a clause in a Bill has the right to reply. Of course, the Minister in charge of the Bill has always the last word. But that is a different matter. The point is that the mover of an amendment to a clause in a bill has been given the right to reply.

I submit here we are dealing with an important matter, as a friend has rightly pointed out. I feel that it would be very proper that the mover of an amendment be given the right to reply to the animadversions that are made on a matter that he has brought before the House. If you choose, you can permit the Minister in charge to have the last word. But I do submit that the mover of the amendment may be permitted to reply to the criticisms that are made against the views that he puts forward.

Shri R. K. Sidhwa: How many provincial legislatures have such a rule?

Pandit Hirday Nath Kunzru: (United Provinces: General): Mr. Vice-President, may I make my point a little clearer so that there may be no misunderstanding about it. The Draft Constitution was placed in our hands some time ago. There is a provision in it relating to the redistribution of the territories of States of various kinds. Dr. Ambedkar did not place before the House the provision contained in the Draft Constitution. The proposition to which he invited our attention was an amendment of the original provision, and in moving his proposition he spoke not merely on the merits of his proposal but also on the original proposition contained in the Draft Constitution. It cannot therefore be said that in speaking for the second time he was dealing with something that he had not spoken on originally. He had, it seemed to me, exhausted his right to speak. Nevertheless, he was allowed to reply to the observations made by the other members. I was personally very glad to hear him though I do not agree with all that he said or with much of what he said. But this raises an important question regarding the rights of the members who move amendments, and it is this point that I would like to be cleared up. If a Minister who moves an amendment has the right to reply, may not another member of the House have the same right in similar circumstances?

Shri Ghanshyam Singh Gupta: On a point of order. .....

Mr. Vice-President: I am going to give my ruling. Under the Rules of the House I am not aware that there is anything which gives a right to the mover of an amendment to give a reply. If I asked Dr. Ambedkar to give a reply it was because he was asked certain questions and I thought it right and proper and fair that he should be given an opportunity of explaining his position. That is my ruling.

Now I shall put Pandit Kunzru's amendment to the vote.

The question is:

"That in amendment No. 150 of the List of Amendments, in clause (b) of the proviso to article 3, for the words 'the previous consent' the words 'the views' and for the words 'has been' the words 'have been' be substituted respectively."

The motion was negatived.

Mr. Vice-President: The question is:

"That for the existing proviso to article 3, the following proviso be substituted :—

'Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—

[Mr. Vice-President]

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislature of the State, or as the case may be, of each of the States, both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where such proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been obtained.' "

The motion was adopted.

Mr. Vice-President: It seems to me that the amendment of Prof. K. T. Shah, as well as the next set of amendments up to No. 175 fall through after the acceptance of Dr. Ambedkar's amendment. Then we may pass on to No. 176.

Shri Lakshminarayan Sahu: I would like to move amendment No. 154 which is in my name.

Mr. Vice-President: That is an amendment for substitution to an article which has been dropped altogether. Therefore it cannot be discussed here.

(Amendment No. 176 was not moved.)

We have here an amendment No. 176 (a) from Begum Aizaz Rasul. That is concerned with the National Language. Like others it may be postponed to the proper place.

That finishes Article 3. Is there anyone who wishes to discuss the Article as a whole?

Pandit Lakshmi Kanta Maitra (West Bengal: General): What will be the position if the honourable member is allowed to speak on the Article as a whole? Will Dr. Ambedkar be called upon to reply to that again?

Mr. Vice-President: Most certainly not.

Pandit Lakshmi Kanta Maitra: This whole article has not yet been disposed of and Dr. Ambedkar has so far replied only to the amendment and not to the whole article.

Mr. Vice-President: We shall listen to the honourable member and if he traverses old ground, we shall ask him to desist.

Pandit Lakshmi Kanta Maitra: Therefore, Dr. Ambedkar is not entitled to reply as a right?

Mr. Vice-President: No.

Shri M. Ananthasayanam Ayyangar (Madras: General): That is hypothetical. It does not arise.

Shri Brajeshwar Prasad (Bihar: General): The Article is designed to serve the following three purposes.....

Prof. Shibban Lal Saksena: (United Provinces: General): An important question of procedure is involved. To this Article there have been tabled a number of amendments but you allowed two of them or three of them to be moved and then you took votes upon two of them. There was no chance of moving the other amendments. I think all the amendments should have been allowed to be moved and then votes should have been taken. Otherwise other members will have no occasion to assess them. If they were moved in the House, the House might have accepted some of them.

Mr. Vice-President: What are the amendments which have not been moved?

Prof. Shibban Lal Saksena: All the amendments up to No. 174.

Mr. Vice-President: They do not arise. They have been practically rejected on account of the acceptance of Dr. Ambedkar's amendment.

Prof. Shibban Lal Saksena: But they should have been allowed to be moved.

Mr. Vice-President: Why did you not point this out at the proper time?

Prof. Shibban Lal Saksena: It may be kept in view in future.

Mr. Vice-President: That point will be kept in mind.

Shri Brajeshwar Prasad: The Article is designed to serve the following three purposes:

(a) To wipe out the existence of any Province or State;

(b) To strengthen the hands of Sardar Patel;

(c) To create new provinces.

The Article is silent on two fundamental points: viz., (i) the constitutional powers of the new States formed under the provisions of this Article. It has been left to the majority party in the future Parliament of India to determine by the most convenient process of simple majority whether the new State thus formed will be placed in Part I, II, or III of the First Schedule. (2) the conditions under which the Parliament can function under the provisions of this Article. The Parliament has the legal power to unite or break up States without any rhyme or reason. Its hands have not been fettered by any conditions under the provisions of this Article.

Let me illustrate my point. If the majority party in power at the Centre takes into its head to wipe out the Province of Bihar it can easily do so in either of the following two ways open to it under the provisions of this Article, namely:

1. Bihar can be divided into parts and the whole territory placed under the direct jurisdiction and administration of the Government of India. The plain meaning of the Article is that the Government of India has got the wide power of placing a State, put in either Part I or Part III, in Part II of the First Schedule.
2. Bihar can be merged with Orissa and the new state thus created can be brought entirely under the direct governance of the central power.

The Government of India must have the power to take over the administration of a State into its own hand, if it does not govern well or in accord with the spirit of the constitution. Similarly it must have the authority to punish a recalcitrant state which under the stress of centrifugal forces tends to drift away from the Centre.

As stated above the second purpose for which the Article has been incorporated is to strengthen the hands of Sardar Patel. The constitutional position of the Native States is still in the melting pot.....

Pandit Hirday Nath Kunzru: Indian States and not Native States.

Shri Brajeshwar Prasad: It would be far better to call them Native States than Indian States. The native states have always been the weakest link in the chain of Indian Nationalism. Special care and attention must be bestowed in tackling these problems. The present craze for constituent assemblies in the native states must be checked. State armies must be wiped out. The native states must be brought under the direction, supervision and control of the Ministry of States and the Government of India. It will be desirable to place them in Part II of the First Schedule. The line of least desistance was adopted in amalgamating a large number of states into unions. The formation of these unions will encourage fissiparous tendencies.

[Shri Brajeshwar Prasad.]

It lies within the power of Sardar Patel to bring all these territories under the direct government of the central authority. To obviate the danger of any misconception in the minds of the state people that we are tending towards absolutism and despotism I suggest the appointment of a Deputy Minister of States from the ranks of those who are representing the states people in this Constituent Assembly.

The third purpose for which this Article has been conceived is to make some room for those who are the great champions of Linguistic Provinces. I am opposed to this Article to the extent it tends to serve this purpose.

A great fuss is being made that it is undemocratic to oppose the cherished ambitions, hopes and aspirations of a considerable section of the community. But a thing must be intrinsically sound to carry weight. No standard of sound democracy can justify the great wrong that has been done to this country by the tragic partition of August 15, 1947.....

Mr. Vice-President: This has nothing to do with the Article under consideration. The Honourable Member is getting into stride and five minutes have already gone.

Shri Brajeshwar Prasad: Sir, I said at the beginning that I wanted ten minutes and I have taken only five minutes so far. I am however entirely in your hands.

Mr. Vice-President: I am equally in your hands.

Shri Brajeshwar Prasad: Nationalism is more dear to me than Democracy. It is a very poor conception of democracy to say that it is very necessary to secure approval and obtain consent at all levels of administration. Such a notion will only lead to utter chaos and anarchy.....

Srijut Rohini Kumar Chaudhari (Assam: General): On a point of order, Sir, I do not know under what provision you have allowed this sort of speech being made after the amendments have been carried in the House. I have seen no precedent where an amended resolution or amended provision of a Bill can be allowed to come up before the House and discussion allowed. If everybody here is allowed to write a criticism of the debate on this clause and inflict that speech on the House there will be no end to it. There is no procedure which allows a speech like this after the amendments have been carried out.

Mr. Vice-President: I may point out that there is a precedent for it when Mr. Kamath spoke at the end of the second Article and there was no objection at that time from any quarter.

Shri Brajeshwar Prasad: The essence of democracy is that people must aspire after higher goals of political life. Any demand of the people which does not fulfil this essential pre-requisite is not democratic.

Mr. Vice-President: This is wasting the time of the House.

The question is:

"That Article 3, as amended, form part of the Constitution."

Sardar Hukam Singh (East Punjab: Sikh): The Article cannot be put to the House unless those amendments that have been held over are decided upon.

Mr. Vice-President: They have been left, as they are not in order after the acceptance by the House of the amendment of Dr. Ambedkar.

Shri Raj Bahadur (United State of Matsya): Sir, I invite your attention to the fact that the Honourable Member Mr. Brajeshwar Prasad has used the words "Native State" in respect of the Indian States. I seriously object to the use of the word "Native" and would request you to rule out such words.

An Honourable Member: They should be expunged from the proceedings.

Mr. Vice-President: That question does not arise.

The question is:

"That Article 3, as amended, form part of the Constitution."

The motion was adopted.

Article 4

Shri M. Ananthasayanam Ayyangar: Sir, may I suggest a point of procedure just to avoid unnecessary waste of time. You have called out article No. 4 and you have asked Mr. Naziruddin Ahmad to move his amendment. All members who wish to take part in the discussion may be allowed to speak on the article also along with the amendments, so that there need not be a repetition once again when you put the article as a whole. If all the amendments are exhausted there may not be any speeches again. It is open to you and there is nothing to prevent you from giving such a ruling as this.

Mr. Vice-President: I accept your suggestion.

Mr. Naziruddin Ahmad (Bengal: Muslim): Sir, I beg to move:

"That the words 'of this Constitution' be deleted in clause (1) of article 4 and throughout the Draft Constitution wherever the said words occur in the same context; and a new definition (bb) be inserted in clause (1) of article 303:—

'(bb) "article" means article of this Constitution'."

In the ordinary legislation of this country whenever we refer to a section we never repeat the word "section" of this Act. So far as this Constitution is concerned we have used the word 'article' instead of 'section', and the wording of the Act is due to the fact that it is implied under the General Clauses Act. I submit that we should apply a similar device in this Constitution by the adoption of a new definition (bb). I have suggested in the amendment that the words are absolutely unnecessary. Whenever we refer to an article it is obvious that an article of this Constitution is always meant. I would point out respectfully that in this draft Constitution, in many places, the Article number has been given without the addition of the words 'of this Constitution'. Even in this very Article in one place we have these words 'of this Constitution' and in another place, these words are not there. We may uniformly omit these words in all places.

Mr. Vice-President: The Honourable Member may move all his amendments to Article 4, one after the other, up to amendment No. 181 on the Order Paper, and be as brief as possible.

Mr. Naziruddin Ahmad: I shall be brief, Sir. But it must be noted that this amendment of mine will dispose of no less than 68 amendments. With reference to the Schedule we have omitted the repetition of the words 'of this Constitution'. Whenever you refer to the Schedule you refer to the Schedule Number and do not say, such and such Schedule 'of this Constitution'. This is because of a special definition which has been provided in the draft Constitution itself. I draw the attention of the House to Article 303, clause (1), item (v): ' "Schedule" means a Schedule to this Constitution'. This is a very necessary provision. On this analogy, 'Article' should also mean an Article of this Constitution. I submit that the amendment I have suggested is similar to item (v) of 303 (1).

Now I shall move the other amendments, 178 to 181.

I move:

"That in clause (1) of Article 4, for the words 'article 2 or article 3', the words and figures 'article 2 or 3' be substituted."

[Mr. Naziruddin Ahmad]

I submit that the word 'article' need not be repeated as it is done in clause (1) and, in fact in many places in this Draft Constitution.

Then I move:

"That in clause (1) of article 4, for the words and figures 'article 2 or article 3', the word and figure 'article 3' be substituted."

I move next:

"That in clause (1) of article 4, for the words 'shall contain such provisions for', the words 'shall also provide for' be substituted."

This is a very simple amendment.

I now move my last amendment to this article:

"That in clause (2) of article 4, for the words 'for the purposes of', the words 'within the meaning of' be substituted."

This is only a verbal amendment.

Mr. Vice-President: The subsequent amendments may now be moved one after the other. Amendment No. 182 in the name of Prof. Shibbanlal Saksena is the next in order. Though it is for the deletion of clause (2) and hence cannot be allowed, I would give him an opportunity to speak on this Article.

Discussion will henceforth be on the concerned Article as a whole.

Prof. Shibban Lal Saksena: I am not moving 182 for the omission of clause (2).

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Sir, I move amendment No. 184:

"That in clause (2) of article 4, for the words 'for the purposes of article 304', the words 'under article 304' be substituted."

The retention of the existing words will lead to some sort of complication. Therefore we should substitute the words 'under article 304.

Shri H. V. Kamath: Mr. Vice-President, by your leave, I shall make a very brief observation on amendment No. 177 of my Honourable friend Mr. Naziruddin Ahmad. Before you call upon Dr. Ambedkar to reply, may I request him, in case he holds that amendment No. 177 should be rejected, to give us some reasons for his opposition and not merely repeat the trite formula 'I oppose this amendment'? Because, apart from the arguments advanced by my friend the mover of the amendment and the instances quoted by him, I have gone through the constitutions of the Commonwealth of Australia, the Union of South Africa, the Swiss Confederation and the German Reich which have all been supplied to us in a booklet of the Assembly Secretariat, called Constitutional Precedents—Second Series. I have gone through them all very closely and I find that this sort of repetition of the phrase "of this Constitution" does not find a place in any one of them.

After all, to my mind, brevity is the soul or essence of a Constitution, and we should try to avoid overburdening the Constitution with redundant and unnecessary words or phrases or expressions. I find in our draft Constitution this expression 'of this Constitution' repeated *ad nauseam*. I think the amendment is a reasonable and harmless one. We should pay some attention to the language of the articles of the Constitution. In conclusion I repeat my request to Dr. Ambedkar not to merely repeat the formula 'I oppose', but give reasons as to why he does so.

Shri Rohini Kumar Chaudhari: I have come to the rostrum to honour my friend Mr. Naziruddin Ahmad by opposing this amendment. (*Laughter*). I regret that he has wasted some of our time and I curse myself that I cannot resist the temptation to oppose him and waste some time of the House also by doing so. I would be failing in my duty if I do not record here the appreciation

which we must give to that noble band of thieves which operates in the East Indian Railways between Howrah and Delhi. We must give our thanks to this noble gang that is responsible for stealing only the brief-bag containing various other answers of our friend Mr. Naziruddin and, but for that fortunate fact, there would have thousands more of amendments of the kind we are dealing with now. I would warn my friend Prof. Shah that this noble gang may be operating between Bombay and Delhi as well.

Mr. Vice-President: I am afraid this has no bearing upon the matter on hand.

Shri Rohini Kumar Choudhari: The point is that if there had been no theft of his brief from his compartment when he was coming this time to attend the Assembly there would have been more such amendments which could be easily left to the draftsmen and not brought before the House. I will also say, Sir, that in dealing with amendments from Mr. Naziruddin Ahmad, although some of them are very good ones, because they are tabled in his name, they are often opposed without any comment: Therefore I would request my honourable Friend, if he comes forward with very serious amendments, to table an amendment to change his name also, so that his amendments may be seriously considered.

Prof. Shibban Lal Saksena: Sir, I gave notice of an amendment that clause (2) of article 4 be omitted but you have ruled it out of order. I think that an amendment for the deletion of a clause can be moved, but your ruling is there and I bow to it. I feel that we must bear in mind one particular aspect of Article 4 to which I would especially wish to draw the attention of Dr. Ambedkar. In this article Dr. Ambedkar has provided an easy method for changing boundaries because in clause (2) he says that "no such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 304." In article 304 it is laid down that any change in the constitution must be passed by a two-thirds majority, whereas here it is provided that so far as any law referred to in article 2 or 3 of the Constitution is concerned, it shall not be deemed to be an amendment of the Constitution. Sir, I personally feel that changes in boundaries of States are matters of much consequence and they should not be allowed to be carried out by a mere majority, because the boundaries of a State should be stable and it should not be possible for every majority in Parliament when it comes to power to alter boundaries which this clause (2) will enable them to do. I think this is a wrong provision, but still I think that in the first ten or twenty years it may probably be allowed. My honourable Friend, Dr. Pattabhi Sitaramayya and others have given notice of an amendment to that effect, but they are not moving it. I do not want to move any amendment but I do feel that it should not be made easy for boundaries of States to be changed by a mere majority. If we allow this clause to remain as at present, we should at least set a time limit. This should not be made a permanent part of the Constitution. I hope Dr. Ambedkar will say how he feels about this very important matter.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I did not think that this was a matter which required any speech from me, but as Mr. Kamath has expressed a desire that I must not merely negative the amendment but should offer an explanation as to why I was not prepared to accept the amendments suggested by my honourable Friend, Mr. Naziruddin Ahmad, I have come here to make my explanation. I think it will be agreed that in matters of this sort, which relate merely to phraseology and not to the substance of the article itself, it cannot be stated that it is a matter of principle at all. It is a mere matter of precedent how different Constitutions have used language in matters which are analogous. My submission is that in the language we have used we are absolutely covered by precedent with regard to the question of repeating the phrase "of this constitution". My friend, Mr. Kamath, stated that he has examined several constitutions such

[The Honourable Dr. B. R. Ambedkar]

as that of Australia and of some other countries but did not find this phrase " of this Constitution" contained therein. I am sorry that he did not extend his researches to the Irish Constitution. If he had, he would have found that the phraseology used in the Draft Constitution is the same as is used in the Irish Constitution. For his reference, I would like to draw his attention to Article 19 of the Irish Constitution, article 27, sub-clause (4), article 32 and article 46, sub-clause (5) where he will find that, wherever the word "article" occurs, it is followed by the phrase "of this Constitution".

I may also point out to Mr. Kamath that in this respect we have also followed the phraseology contained in the Government of India Act 1935. I am sorry I have not had the time to examine all the sections of the Government of India Act but I have just, fortunately for myself, found one section which is 142-A where similar phraseology has been used. So far therefore as the first part of the amendment moved by my honourable friend, Mr. Naziruddin, is concerned, my submission is that we have not acted in any eccentric manner but that whatever phraseology we have used is covered by the Constitutions of other countries as well.

With regard to his second amendment that we should not repeat the word "article" after the word "or" and that we should merely say, "article 2 or 3", my submission is again the same. There again we have followed well-known Constitutions and if my friend will examine them, he will find that similar phraseology occurs elsewhere also. For his information, I would ask him to refer to section 69, sub-clause (3), of the Government of India Act. The word used there is "paragraph". It says, "paragraph (d) or paragraph (e)". It does not merely say, "paragraph (d) or (e)". Therefore this can hardly be a matter of debate or a matter of difference of opinion so far as the principle is concerned. It is a mere matter of precedent and the question to be asked is: Have we done something which is not covered by precedent? And my submission is this, that whatever we have done in the matter of using phraseology is covered by precedent and therefore, there can be no objection to any clause as it stands in the draft.

Mr. Naziruddin Ahmad: Then what about clause (2) of Article 4? I think there should be a short notice amendment to use the words "of this Constitution" in clause (2) in order to make the draft clear.

Mr. Vice-President: We cannot create a bad precedent by admitting a short notice amendment.

The Honourable Dr. B. R. Ambedkar: I cannot accept it, Sir.

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

Mr. Vice-President: The question is:

"That the words 'of this Constitution' be deleted in clause (1) of article 4 and throughout the Draft Constitution wherever the said words occur in the same context; and a new definition (bb) be inserted in clause (1) of article 303 :—

'(bb) "article" means article of this Constitution';"

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 4, for the words 'article 2 or article 3', the words and figures 'article 2 or 3' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 4, for the words and figures 'article 2 or article 3', the word and figure 'article 2' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 4, for the words 'shall contain such provisions for', the words 'shall also provide for' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (2) of article 4, for the words 'for the purposes of', the words 'within the meaning of' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (2) of article 4, for the words 'for the purposes of article 304', the words 'under article 304' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That clause (1) of Article 4 stand part of the Constitution."

The motion was adopted.

Mr. Vice-President: The question is:

"That clause (2) of Article 4 stand part of the Constitution."

The motion was adopted.

Mr. Vice-President: That finishes Article 4. The next few amendments, No. 185 and the following are concerned with the national flag, national language, script and so on. I understand that there is an attempt made to arrive at some sort of understanding and I think that it would be to the interest of the House and it will save the time of the House, if we postpone their consideration for the present and pass on immediately to Part IV.

Seth Govind Das (C. P. & Berar: General): Mr. Vice-President, Sir, before you proceed to take up Part IV, I want to bring it to your notice that these new clauses deal with the national flag, the national language, script and the name of the country and so on. I have no objection if they are held over for future, but at the same time, I want your ruling on one point and that is that whenever these questions are taken up in future, suppose when the question of the language of parliament comes in Article 99, then we should be allowed to raise the question of national language, national script and other matters also which are included in the various amendments which are not being moved now. Let it not be ruled out at that time because Article 99 deals only with the language of the parliament and similar things these amendments cannot be moved then. Therefore, Sir, I want this to go on the record as a ruling that in future these questions can be raised and if certain things are decided by the House, then those articles may be inserted in the Constitution wherever it is thought proper to be inserted. (*Interruption*).

The Honourable Shri K. Santhanam (Madras: General): Mr. Vice-President, Sir, on a point of procedure, I submit, it is for the Chair to regulate what sections will be taken and in what order. Therefore, I do not think there should be any debate on your ruling that Part IV should be taken up first. It is not for any honourable member to choose and say where and when an article is to be put in. However, you have asked that Part IV be taken up now and therefore, I suggest we ought to proceed with the articles of that part, without considering any other interpolation.

Mr. Vice-President: I am an unworthy occupier of this chair and I do not think that anybody here need have any apprehension about these amendments being ruled out. We are here so far as I understand it to arrive at a common understanding and to pass a Constitution that will be to the benefit of us all. Here every opportunity, I think, should be given to every Member of the House to place his point of view before the rest of the members and I can assure Seth Govind Das that if I am here, I shall see that no injustice is done to any one.

Shri Damodar Swarup Seth (United Provinces: General): I wish to move amendment No. 187 which has nothing to do with the language controversy going on. My amendment reads like this. (The Honourable Member began to read his amendment).

Mr. Vice-President: I rule your amendment is inappropriate here. We pass on to Part IV.

Shri R. K. Sidhwa: Before you proceed to Part IV, I have got to offer my personal explanation. The Honourable Shri Purushottam Das Tandon levelled a charge against me when I mentioned that no important legislature has got a rule giving the right of reply to the mover of an amendment. I have got a ruling from the Bombay Provincial Legislative Assembly which reads:

"That mover of a motion, but not the mover of an amendment . . . . " [*Interruption*].

Mr. Vice-President: We are not concerned with that just now and I must ask the honourable member to sit down.

Now, we go on to Part IV. I rule amendments 831 and 832 out of order. The first part of amendment No. 833, I rule out of order. Mr. Mahboob Ali Baig, if you like, you may move the second part.

Shri M. Ananthasayanam Ayyangar: Sir, I think this amendment is not in its proper place. This amendment reads: "or alternatively. That the following proviso be added to Article 35:—etc." This should come in after amendment No. 835.

Mr. Vice-President: You can bring in your objection later on.

Mahboob Ali Baig Sahib Bahadur: Sir, I will move this after amendment No. 835. May I be allowed to speak generally on Part IV, Sir?

Mr. Vice-President: No; you can speak only with reference to this particular amendment.

Shri Lokanath Misra: Mr. Vice-President, Sir, we are not prepared to discuss part IV. From Part I to Part IV this is a big jump. We came prepared only for the discussion of Parts II and III. I think we should be given time and the discussion should be adjourned.

Shri M. Ananthasayanam Ayyangar: Sir, Part IV consists of Directive Principles. There are not very many amendments to this Part. Part II relates to Citizenship and Part III relates to Fundamental Rights which are of a justiciable nature. A number of amendments have been tabled to these two Parts. To bring about agreement as to which amendments have to be moved and which need not be moved, takes some time. So far as Part IV is concerned, it does not take much time. They are only Directive Principles; they have been already considered and we have spent long hours over them when we discussed these principles. In these circumstances, I feel nobody need complain of want of notice so far as Part IV is concerned.

Mr. Vice-President: Did you get the lists of amendments?

Honourable Members: Yes.

Shri Amiyo Kumar Ghosh (Bihar: General): Sir, the general practice is that discussion proceeds *seriatim* but instead we are now jumping from Part I to Part IV. We have several amendments to Parts II and III. We are prepared to move them but we are not prepared with the amendments to Part IV. We are taken aback and that is our difficulty. We have several amendments to Part IV.

Mr. Vice-President: You will agree that we should expedite the business of the House.

Shri Amiyo Kumar Ghosh: But there is a method, Sir.

Mr. Vice-President: You will also agree that it is in the interests of the House that before we come here those who have sent in amendments have an opportunity of discussing them with the members of the Drafting Committee and arriving at some kind of understanding. This is in the larger interests of the House and with the idea of saving the time of the House. These are the factors which have induced me to give further time for the consideration of Parts II and III. I believe, on the whole, I have the support of the House.

Shri Amiyo Kumar Ghosh: May I request you, Sir, to adjourn the House now and again sit after the recess. It is about twelve o'clock; we may sit again at three o'clock.

Mr. Vice-President: I shall consider that.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Sir, that we are going to discuss Part IV should have been intimated to the members yesterday. We have not even brought the amendments to be moved to Part IV. We are taken unawares. It is very difficult for us to move the amendments, because we are not prepared with the amendments. It would be unfair for those of us who are not ready, Sir.

Shri M. Ananthasayanam Ayyangar: Sir, it is strange that Mr. Karimuddin should have raised a complaint like this. Every member is generally ready with his amendments.

B. Pocker Sahib Bahadur (Madras: Muslim): Sir, it is very unfair on the part of Mr. Ananthasayanam Ayyangar to say that each and every member should be ready with his amendments to any of the 300 or 400 Articles of this Constitution. It is impossible for anybody to be so, Sir. I submit, Sir, it is unfair to pass over these important Parts and go to a Part which many of us did not expect at all would be taken up. It is only proper that we go in order, or this House should be adjourned till such time as is convenient. (*Interruptions*).

Shri Lokanath Misra: Sir, so much is happening behind the scenes that we are not only puzzled, we cannot even run the race. This is unworthy of us. On bended knees, I would ask you to save us from such situations and help us to undertake our task with regularity and proper direction. If such things are to happen and things go on behind us, kindly ask us to get out and then let things go on as they like. I would but request you, Sir, to give us time to prepare and think about these amendments. We should be in a position to do justice to our constituents, to the great goal and to ourselves and to this august House.

Shri Mahavir Tyagi (United Provinces: General): Sir, may I request the party leaders and the Whips of the majority party to be considerate and take a charitable view? I understand that it is rather unfortunate and unfair that for the failure of the Congress Party to decide issues among themselves, they should force the whole House to accommodate them in this manner. I feel that either the House should be adjourned or some such business be taken up as the members are prepared to discuss.

Mr. Vice-President: If the majority of members are unable to proceed with the business of the House, I am fully prepared to adjourn the House now. We may meet tomorrow at Ten of the Clock.

Honourable Members: Yes.

Mr. Vice-President: The House stands adjourned till 10 a.m. tomorrow.

B. Pocker Sahib Bahadur: May I know, Sir, what Part will be considered?

Mr. Vice-President: We shall deal with Part IV first tomorrow. If there is time, we will proceed further.

The Assembly then adjourned till Ten of the Clock on Friday, the 19th November 1948.

GIPD—L 15 C. A. D.—5-4-49—2,600

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 19th November, 1948

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

DRAFT CONSTITUTION—(*contd.*)

Article 28

Mr. Vice-President (Dr. H. C. Mookherjee): Shall we resume discussion of Part IV? If I remember aright, amendment numbers 831, 832 and 833 were disposed of yesterday. We start with amendment No. 834.

Shri Brajeshwar Prasad (Bihar: General): Sir, before we go clause by clause, I would suggest that the House may be given an opportunity to discuss the general provisions of State Policy.

Mr. Vice-President: I am afraid it cannot be done.

(Amendment numbers 834, 835 and 836 were not moved.)

Kazi Syed Karimuddin (C.P. & Berar: Muslim): Mr. Vice-President, Sir, the amendment which I am moving is:

"That in the heading under Part IV the word 'Directive' be deleted."

Sir, it would have been much better if the amendment of Mr. Kamath could be taken up along with the amendment that I have moved. The provisions of Directive Principles which have been embodied in Part IV are very important as they relate to uniform civil code and to economic pattern and very many Fundamental matters. Directive Principles mean that they will not be binding on the State; in any case, they would not be enforceable in a court of law. My submission is that, if this Constitution is not laying down these principles for being enforced in a court of law, or if they are not binding on the State, they are meaningless. I would like to draw the attention of the Honourable Members to what Dr. Ambedkar has said in his own book, that these principles should be embodied in the Constitution as Fundamental Rights and that a scheme embodying these principles should be brought into operation within ten years. I find, Sir, in Article 31 the economic pattern of the country has been based on very vague generalisations. It is very necessary that the word 'Directive' should be deleted, and as Mr. Kamath has suggested, they should be made Fundamental Principles of State Policy. Therefore, my submission is that the word 'Directive' is unnecessary and meaningless. The provisions under this Chapter become only platitudes or pious wishes and it has been very rightly stated by Dr. Ambedkar that they are more or less only Instrument of Instructions. If they are really an Instrument of Instructions, why should they find a place in the Fundamental Principles to be embodied in the Constitution, I do not understand. Dr. Ambedkar has further said in his speech that we do not want to lay down certain principles because it would be open to the coming generations to have their own pattern—I do not want to read the whole speech. It is only stated in Article 31 that there will be improvement in economic, social and other things. What is the use of laying down generalisations as has been stated in Article 31? Therefore, I submit, it is

[Kazi Syed Karimuddin]

no use treating these principles as Directive; such a course will not prove to be to the good of the people and to the State. It is very necessary that all these principles should be made mandatory in order that a scheme embodying these principles could be brought into operation within ten years.

Sir, I move my amendment, and reading my amendment with Mr. Kamath's amendment, it should be "Fundamental Rights".

Shri M. Ananthasayanam Ayyangar: (Madras: General): Sir, if my friend Mr. Karimuddin follows Mr. Kamath, as Mr. Kamath has withdrawn his amendment.....

Shri H. V. Kamath (C. P. & Berar: General): I have not yet withdrawn my amendment, Sir.

Shri M. Ananthasayanam Ayyangar: He is not moving, I think. The point is this. It is not as if Mr. Karimuddin does not want this Chapter. He only wants the word 'Directive'.....

Kazi Syed Karimuddin: I want the Chapter; only, I want the word "Directive" to be deleted from the heading.

Shri M. Ananthasayanam Ayyangar: He does not want the Chapter to be deleted.

Shri H. V. Kamath: On a point of order, Sir, did we not agree yesterday that all the amendments to an article will be moved first, and then the article will be taken up for discussion?

Mr. Vice-President: Mr. Kamath is correct. I am sorry that this matter escaped my attention altogether. Discussion will be taken up later on.

The next amendment stands in the name of Mr. Kamath, No. 838.

Are you moving amendment No. 838?

Shri H. V. Kamath: Mr. Vice-President, I move:

"That in the heading under Part IV for the word 'Directive', the word 'Fundamental' be substituted."

Sir, while moving this amendment for the consideration of my Honourable friend Dr. Ambedkar and of the House, I would like to advance only two reasons for the same. Firstly, we have been told that Parts III and IV of the Draft Constitution embody certain rights, Part III being justiciable rights and Part IV being non-justiciable rights. But both are looked upon or regarded as rights which are fundamental. I derive support from the report of the Honourable Sardar Patel. I am reading from the reports of the Committees Second Series, from July to August, 1947. Copies of this booklet were supplied to all the Members of the House in March of this year. I am reading from the Honourable Sardar Vallabhbhai Patel's Report which was presented to the Assembly on the 30th August 1947. There he says—and it is addressed to the President of the Constituent Assembly—in para. 2:

"We have come to the conclusion."

'We' means the Advisory Committee on the subject of Fundamental Rights.

"We have come to the conclusion that in addition to these Fundamental Rights, the Constitution should include certain directives of state policy which though not cognizable in any court of law, should be regarded as fundamental in the governance of the country."

And on page 48 of this booklet which contains the report of the committee of which the Honourable Sardar Patel was the Chairman, they have given the title to these very rights which are now embodied in Part IV—"Fundamental Principles of Governance". I should like to know from Dr. Ambedkar and the gentlemen of the Drafting Committee, why they have made a departure from the title given by Sardar Patel to these rights. That Committee gave the title of 'Fundamental Principles of Governance', but here the Drafting Committee have changed the title to 'Directive Principles of State Policy'. There is some

force in Syed Karimuddin's argument that both these are fundamental—the justiciable and the non-justiciable rights; and in requesting the House to consider my amendment I would only say this in conclusion, that if this amendment is thrown out, you will be throwing out not my amendment, but the recommendation of Sardar Vallabhbhai Patel.

Mr. Vice-President: Amendment No. 839—not moved. Is amendment No. 840 going to be moved?

Shri M. Ananthasayanam Ayyangar: No. 840 is the same as No. 838.

Mr. Vice President: Then, it seems to me that the amendments considered so far deal with the heading of this chapter. Members who wish to speak on this may please do so now.

Shri M. Ananthasayanam Ayyangar: Sir, the object of differentiating certain rights as justiciable and non-justiciable rights is well-known. Those here are non-justiciable rights as has been laid down in paragraph 29. They shall not be enforceable in a court of law. Mr. Karimuddin wants that these also should be justiciable rights. I do not know if Mr. Karimuddin is a lawyer. But let him consider one or two suggestions. In Article 26 it is said that the State should within a period of ten years introduce free compulsory education. Take this as an instance. Let us assume that the State does not do so, then can any court of law enforce it? Against whom? In case a decree is granted by a court of law, who will carry it out? If the Government does not carry it out, can the High Court or the Supreme Court enforce it? Is it open to the Supreme Court to change such a government? With its authority, can it by an officer of the Court, an Amin or a Sheriff, imprison all the Ministers, and bring into existence a new set of ministers? In the nature of things, these are only directives and cannot be justiciable rights at all. So there is no purpose in removing the word directive. These are principles which the Government must keep in mind, whatever government may be in power, and they must be carried out. We have incorporated them in the Constitution itself because we attach importance to them. But to classify them as Fundamental Rights as in Part III would be to take away the difference between the one set and the other, and making all the rights justiciable, which, in the nature of things, is impossible. There is no use being carried away by sentiments. We must be practical. We cannot go on introducing various provisions here which any Government, if it is indifferent to public opinion, can ignore. It is not a court that can enforce these provisions or rights. It is the public opinion and the strength of public opinion that is behind a demand that can enforce these provisions. Once in four years elections will take place, and then it is open to the electorate not to send the very same persons who are indifferent to public opinion. That is the real sanction, and not the sanction of any court of law.

Therefore, this amendment is mis-conceived, and I would request the House not to accept it.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I support the amendment to drop the word "directive". It is not only the heading but the entire chapter which is misconceived. Only the other day Dr. Ambedkar enunciated a very important principle by way of reply to Prof. Shah's amendment (No. 98) by which he wanted to introduce certain words into the Constitution to which Dr. Ambedkar said that pious expressions are not proper things to be embodied in a Constitution. He said, "the Constitution is a mere mechanism and no political principles or policies need or should be incorporated in it." He further said that "political principles or policies should be dictated by the people themselves through their votes and posterity should never be fettered by an announcement of policy or principle." These are important words coming from such a high authority. I submit these pious principles should not be enunciated unless there is the backing of the law and they are also made

[Mr. Naziruddin Ahmad]

justiciable. Dr. Ambedkar further said that to introduce pious expressions would be "taking away from the people their right to vote" and these things would be "superfluous". I submit that if you introduce pious principles without making them justiciable, it will be something like resolutions made on New Year's day which are broken on the 2nd of January. I submit that these pious wishes are so obvious that they need not be enunciated at all. If you state them you might also say that people should get up from their bed early and be kind to their neighbours, and so forth. Sir, I submit these are not proper things to be embodied in the Constitution and the amendment of Syed Karimuddin should be accepted.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I am sorry I cannot accept either of the two amendments. Mr. Kamath's amendment is really incorporated in the phraseology as it now stands; the word "Fundamental" occurs, as Mr. Kamath will find, in the very first Article of this part. Therefore his object that these principles should be treated as fundamental is already achieved by the wording of this Article.

With regard to the word "directive" I think it is necessary and important that the word should be retained because it is to be understood that in enacting this part of the constitution the Constituent Assembly, as I said, is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and the executive power which they will have. If the word "directive" is omitted I am afraid the intention of the Constituent Assembly in enacting this part will fail in its purpose. Surely, as some have said, it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of this Assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country. I therefore submit that both the words "fundamental" and "directive" are necessary and should be retained.

Mr. Vice-President: The question is:

"That in the heading under Part IV, the word 'Directive' be deleted."

The motion was negatived.

Shri H. V. Kamath: Sir, I beg leave of the House to withdraw my amendment.

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

Mr. Vice-President: We shall now take up amendment Nos. 841 to 846. The movers will kindly move them one after another and then there will be a discussion.

Amendment No. 841 is a negative one and therefore it is ruled out of order.

Since the Member concerned is not here, Amendment No. 842 falls through.

Amendment Nos. 843 to 846—Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: I shall be moving Nos. 843, 844 and 846. I shall not be moving No. 845.

Sir, I move:

"That in article 28, the words 'unless the context otherwise requires' be omitted."

"That in article 28, for the word 'requires', the word 'indicates' be substituted."

"That in article 28, for the words 'the State', the word 'State' be substituted."

With regard to my first amendment for the deletion of the words "unless the context otherwise requires", I beg only to submit this. There are only a

few articles in this part. This article attempts to define "the State" to mean States in part III of the Constitution. I submit that there is here no difficulty or any confusion. If we say "unless the context otherwise requires" it would indicate that the meaning that has been definitely given by article 28 to the expression "the State" is subject to fluctuation in accordance with the context, that is in accordance with the individual approach of each man. This would create an uncertainty and a very needless uncertainty in the context. I would submit that the word should be precisely defined. In fact the word "State" has been defined in so many places to mean so many things that there has already been a sufficient amount of confusion in the understanding of the word "State" and the introduction of these words— "unless the context otherwise requires" would introduce further complications. I therefore submit that these words should be removed and, if necessary, doubts in any particular context should be met by a proper change in draftsmanship.

The second amendment is merely verbal, and I want to change the word 'requires' into the word 'indicates'. I do not wish to say anything further in this connection.

With regard to the third amendment, that for the words "the State" the word "State" be substituted, I have to submit that the word 'State' is the proper word in the context. If we define the expression as "the State" it will lead to difficulties in the clauses in which this expression occurs. I should submit that the word "State" should be more appropriate and I shall attempt to show why.

The Australian precedent which has been cited in another connection by the Honourable Dr. Ambedkar, I think, should better be discarded. The reason why I submit this amendment is this: That in the context the expression "the State" appears in articles 29 to 40. In those contexts the words "the State" are inappropriate. It should be remembered that the words "the State" are attempted to be defined as "State" within the meaning of Part III of the Constitution. It is enough for me to point out that there are more States than one included in Part III of the Constitution. Therefore the words "the State" in the following articles—29 to 40—would be inappropriate. If there is one individual State which we want to indicate, the words "the State" would be proper in the context. But we have in mind not one State or "the State" but several States in the different contexts. So I have suggested the expression "State". It is for this reason that I want to remove the word "the" which to my mind is absolutely unnecessary. It is a grammatical article which need have no place in the definition itself. If we tie down the definition to the word "the" the words become inseparable and therefore a forced use of this expression in the succeeding articles becomes absolutely compulsory. Therefore, this will need careful consideration.

The Honourable Dr. B. R. Ambedkar: Sir, I oppose the amendments of my friend, Mr. Naziruddin Ahmad. The words "the State" in Article 28 have been used deliberately. In this Constitution, the word "State" has been used in two different senses. It is used as the collective entity, either representing the Centre or the Province, both of which in certain parts of the Constitution are spoken of as "State". But the word used there is in a collective sense. Here the words "the State" are used both in a collective sense as well as in the distributive sense. If my friend were to refer to part III, which begins with article 7 of the Constitution, he will see in what sense the word "State" is used. In this part, unless the context otherwise requires, "the State" includes the Government and the Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India. So that, so far as the Directive Principles are concerned, even a village *panchayat* or a district or local board

[The Honourable Dr. B. R. Ambedkar]

would be a State also. In order to distinguish the sense in which we have used the word we have thought it desirable to speak of 'State' and also 'the State'. Honourable Members will find this distinction also made in Article 12 of the Constitution. There we say:

"No title shall be conferred by the State;

No citizen of India shall accept any title from any foreign State."

There we do not use the words "the State"; but in the first part we use the words 'the State'. We do not want any of the authorities, either of the Centre or of the provinces, to confer any title upon any individual. That being the distinction, the House will realise that the retention of the words 'the State' in Article 28 is in consonance with the practice we have adopted in drafting this Constitution.

Mr. Vice-President: I shall now put these three amendments to vote. The question is:

"That in article 28, the words 'unless the context otherwise requires' be omitted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in article 28, for the word 'requires' the word 'indicates' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in article 28, for the words 'the State', the word 'State' be substituted."

The amendment was negatived.

Mr. Vice-President: I shall put Article 28 to vote. The question is:

"That article 28 form part of the Constitution."

The motion was adopted.

Article 28 was added to the Constitution.

Article 29

Mr. Vice-President: The House will now take up Article 29 for discussion. Amendment No. 847 for the deletion of Article 29 is out of order.

Professor K. T. Shah may now move his amendment.

Prof. K. T. Shah (Bombay: General): Mr. Vice-President, I beg to move:

"That for article 29, the following be substituted:

'29. The provisions contained in this Part shall be treated as the obligations of the State towards the citizens, shall be enforceable in such manner and by such authority as may be deemed appropriate in or under the respective law relating to each such obligation. It shall be the duty of the State to apply these principles in making the necessary and appropriate laws.'"

In submitting this motion to the House, I would in the first place express my sense of keen appreciation of Dr. Ambedkar's remarks made a few minutes ago, wherein he not only insisted that we should not leave such matters as mere pious principles, but also should make them a sort of directive, which, though the word mandatory is not used, may amount to that state. I was a little unhappy when, on a previous occasion, the learned Doctor was pleased to say that the Constitution was not a document for embodying such principles. It seems that the course of conversion operates very swiftly with a brain so alert, an intelligence so sharp a mind so open to new ideas as that of the learned Doctor. That is why I am very happy to express my sense of keen appreciation for the rapid conversion that he has exhibited today in agreeing to find

a place for enforcement in the Constitution. In fact he has gone a step further; and, though he does not admit their place in the name or designation of the Constitution, he has been pleased to make that as a positive thing, the enforcement of such principles, fundamentals as they are called, in the Constitution.

Having expressed this, Sir, I hope that Dr. Ambedkar would also see the advisability of accepting my amendment that this article 29, which I regard as an insult to the entire Constitution, be substituted by what I have suggested.

Sir, article 29 makes it quite clear, in the opening phrase, that no court can enforce these ideals. That is to say, the only authority that we are going to set up in the Constitution, to give effect to whatever hopes and aspirations, ambitions and desires, we may have in making these laws and in laying down this Constitution, is from the very start exempted, exonerated and excused from giving effect to one of the most cardinal, important and creative Chapters of this Constitution. We have suffered from a hundred years of exploitation; we have suffered from a hundred years of denial and exclusion. Now that we are coming into our own, we insist—I hope the House will join me in the intention—that the night of darkness shall pass away and that from the very first rising of the sun on the horizon, even from the first glimpse of dawn, we shall make up our minds, we shall gird up our loins to give effect to all the hopes that our leaders in the past have expressed.

Sir, certainly it would not be in consonance with such a hope as this to lay down, at the very outset, in a Chapter like this, that no court shall be entitled to give effect to our hopes and aspirations. If I may say so without any offence, it is a kind of provision which encourages the Court and also the Executive not to worry about whatever is said in the Constitution, but to act only at their own convenience and on their practicability, and go on with it. It looks to me like a cheque on a bank payable when able, viz., only if the resources of the Bank permit. I do not think that any authority connected with the drafting of this Constitution would approve of such a provision being incorporated in the Negotiable Instruments Act authorising the making of a cheque payable when able. It seems to me that unless my amendment is accepted, this Chapter would be nothing else, as it stands, but a mere expression of some vague desire on the part of the framers that, if and when circumstances permit, conditions allow, we may do this or that or the third thing. There is nothing mandatory,—with all deference to those who have spoken in support of the retention of the word 'directive' in the title of the Chapter—or compulsory, included in the various provisions. Sir, in the absence of any such mandatory direction to those who may have the governance of the country hereafter, it is quite possible that all these things for which we have been hoping and striving all these years may never come to pass, at any rate within our lifetime. This is an attitude which no lover of the people would care to justify, would dare to justify.

I suggest, Sir, that many things look impracticable until they are tried, and become practicable if they are tried. Nothing in practice is practicable until it is tried. Take even the elementary right to education which every civilised Government is now undertaking to provide for the children of the nation. Even this right to compulsory primary education has been provided for in such a clumsy, half-hearted and hesitating manner that one wonders whether the framers of this Draft were at all anxious that the curse of ignorance that has rested upon us all these years should be removed at all. The provision made here just permits the State, even within the period of ten years, only to "endeavour" to give effect to this aspiration. Even there it is not compulsory; even such an elementary right as the right to primary education for every child in the nation is not mandatory. As such I feel Sir, that unless some change is made, unless you make these preemptory obligations mandatory duties of the State, the State or the constituent parts of it may not at all attend to these duties of the State. These are most elementary duties in my opinion, duties

[Prof. K. T. Shah]

which are most primary duties, if I may say so, most sacred that no one should try to insult this House by suggesting these are not practicable.

Then, Sir about the absence of any sanctions as another learned friend put it. An old English writer—it was Walter Bagehot, I think,—who wrote in a classic chapter of his book on the English Constitution that Parliament votes every year large sums of money to the Crown, but there is no sanction or authority for anybody to compel the Crown that the sums shall be spent. I agree. There is no constitutional authority laid down so far in the unwritten Constitution of England that the sums voted shall be spent. But does anyone think that because there is no legal sanction, any Minister in his senses would for a moment suggest that these sums need not be spent, or that the so-called prerogatives of the King like dismissing any officer of the State would be used now arbitrarily as they had been in the past?

I mention this illustration, Sir, merely to emphasise the fact that it rests with you whether or not you are resolved that no longer shall the curses that have rested upon us so far will continue, for a moment longer than we can afford or than we can possibly help. It is no use putting down these mere pious hopes and aspirations or general directives that may be enforced if and when circumstances permit. It is possible that circumstances will never permit until you compel them to permit you. That is why from the very start I would lay down that these shall be mandatory, compulsory obligations of the State, which every citizen will have the right to demand should be fulfilled, and if today you think of no sanction, if today you can devise no means by which they can be enforced except perhaps by the periodic general elections when Ministries may be turned out for not fulfilling these duties, then it is up to you to devise something. Where there is a will—to repeat the trite old saying—there will always be a way. It is either bankruptcy of intelligence if you say that you cannot find a way; or it is really a genuine lack of desire to make good what we have been hoping and striving for.

There may be many in this House—I am sure Dr. Ambedkar is the foremost amongst them—who will remember that when the late Gopal Krishna Gokhale first brought forward the Bill for compulsory primary education, the then officials of the then Government of India gave all sorts of reasons why such a step was simply impracticable. One of the arguments was that an expenditure of three crores spread over ten years, that is rupees thirty lakhs a year, was too heavy a burden for the Government of India's finances at that time to bear. But within four years of that, however, they were wasting not three crores but more than thirty crores over the war in which we had no concern and about which we were not consulted.

That was the case when we were powerless, when we were helpless in our own country. That position, however, is changed today, and I hope the Ministers of the new Government of India, the Ministers of the Government of free India, the legislators of the Republican India, will not now rest content with merely expressing these pious wishes. If there are difficulties in the way, they are only meant to be overcome. These difficulties should not be allowed to stop our progress at any cost. Hence it is that I would like to invite the House to agree with me that the provisions contained in this Chapter must be regarded as the Obligations of the State towards every citizen and *vice versa*. Every citizen should have the right to compel the State to enforce these obligations by whatever means may be found practicable and effective, and conversely the State also should have the right to see that every citizen fulfils his obligations to the State.

There is only one more word that I have to say and I have done. My Honourable Friend Mr. Rohini Kumar Chaudhary expressed his keen sense of

appreciation yesterday for the gang of thieves who are operating between Calcutta and Delhi, and he warned me they may do so also between Bombay and Delhi. I am deeply grateful for the solicitude that he had expressed on my account as well as on that of another Honourable Member. I can only assure him that his apprehensions are groundless, because I am not in the habit of just travelling in a railway compartment with my amendments in an attache case under my head. I carry them mostly in my own head. Unless therefore the thieves take a highly expert surgeon with them, who can remove the amendments from my brain, they cannot take away my amendments; and the House will not be spared—certainly Mr. Rohini Kumar Chaudhary will not be spared—the necessity of going through these amendments. May I also add without any offence that the loss of these amendments is not the loss of Mr. Naziruddin Ahmad or myself. It is the loss of the House, because those of us who have come here and put forward these amendments are not doing them for fun or mischief, but have put brains and intelligence into them.

Mr. Naziruddin Ahmad: I wish to speak on my amendment, though I do not wish to move it.

Shri M. Ananthasayanam Ayyangar: A similar amendment for substituting the words "every State" for the words "the State" was moved and negatived.

Mr. Naziruddin Ahmad: It depends upon the context.

Mr. Vice-President: If you insist on speaking, you may do so.

Mr. Naziruddin Ahmad: I won't take more than one minute, Sir.

Shri M. Ananthasayanam Ayyangar: I submit that the President has always got the right to disallow in order to avoid frivolous amendments. This matter has already been considered by the House. It has been disposed of and except for the purpose of taking the time of the House, there seems to be nothing else behind it. I submit that there is no substance in Mr. Naziruddin Ahmad's amendment, and if it is still being persisted, then I want your ruling.

Mr. Naziruddin Ahmad: I very much regret that my attempt to explain is being regarded as dilatory.

Mr. Vice-President: I suggest you proceed without paying any attention to what he says.

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

"That in article 29, for the words 'the State', the words 'every State' be substituted."

I fully admit the force of the remarks of Mr. Ananthasayanam Ayyangar, but I am compelled to place before the House a certain difficulty. Article 29 says that it shall be the duty of the State to apply these principles in making laws. Then the State means one State, but here there are a large number of States

The Honourable Shri K. Santhanam (Madras: General): May I ask the honourable member to see Article 29 where "the State" has been defined as having the same meaning as in Part III of this Constitution. Therefore in article 29 also the State is the same thing.

Mr. Naziruddin Ahmad: I was pointing out the difficulty in the draft. We have already been placed in a straight jacket by accepting the words "the State" and the straight jacket is pursuing us in the clauses. I should say the words "every State" are more appropriate. The fact that we have accepted the definition does not prevent us to avoid the absurdities in the following articles. I submit that the expression in the context is absolutely absurd.

Prof. Shibban Lal Saksena (United Provinces: General): I am not moving my amendment, but I want to speak on the Article as a whole. Sir, this Article has been the subject of many amendments and the purpose of most of the amendments is that this Chapter should have some sort of binding force. I

[Prof. Shibban Lal Saksena]

have also given notice of an amendment which is No. 861 in the printed list and which says that "After a period of ten years, these directive principles of State Policy shall become the Fundamental Rights of the People and shall be enforceable by any Court". After a very careful consideration of the various Articles in this Chapter, I feel that it will not be proper to lay down such a tall order. In fact, the Drafting Committee has itself laid down a period of ten years for compulsory Education upto fourteen years of age and three years for separation of Executive from Judiciary and some such other things. So something has been done in this direction. What I really want is that these Directive principles in this Chapter should not merely remain a pious wish. My Honourable friend, Prof. K. T. Shah, also wanted that these fundamental principles should guide the state in their legislation. I wish to assure him that the very fact that this chapter forms part of the Constitution, gives such a guarantee and it will surely be open to every legislature to point out when an Act is brought before the Assembly that it is in conflict with the principles laid down in this Chapter. So, the mere fact that they are being included in the Constitution shows that every legislature will be bound to respect these directive principles in the Constitution and therefore, any act which offends the directive principles shall be *ultra vires*. Although every citizen will not be able to go to a court of law for enforcement of these principles, yet the President of every Assembly will be within his rights to rule out any Bill and say that this Bill cannot be moved, because it is against the fundamental directive principles of the Constitution itself. I therefore, think that this chapter is not merely a chapter of pious wishes, but a chapter containing great principles. A perusal of article 31 will show that very many high principles have been enunciated here and I hope Prof. Shah will also admit that if these principles are acted upon in both the Union Legislature and the State Legislatures, we shall have a State which will almost be acting as if these principles were fundamental rights which were enforceable by a court of law. Of course, every individual will not be able to go to a court of law to get their enforcement, but every legislature will be able to rule out any Bill which offends these principles. I therefore, think that my amendment which was intended to put a sort of time limit to make the State go on with their implementation at a rapid pace, so that all these directive principles may become incorporated in Acts of Parliament in ten years, may create difficulties by its rigid time limit. I hope my purpose will be realized by the fact that this part shall be a part of the Constitution and every legislature will be required to respect the principles contained in it and to see that no Act is passed which is against the principles enunciated in this chapter. I therefore, think that those friends who term this Article merely as a chapter of pious wishes are not correct. This is a very important chapter which lays down the principles which will govern the policy of the State and which, therefore, will ensure to the people of the country the realisation of the great ideals laid down in the preamble. I therefore hope that the opposition which my friend, Prof. Shah, has voiced through his amendment will not be pressed. Sir, I therefore support this Article.

Mr. Hussain Imam (Bihar: Muslim): May I ask if there will be no discussion on these amendments except by the movers?

Mr. Vice-President: If you had caught my eye, I would have given you an opportunity.

Mr. Hussain Imam: I thought that after the amendments have been disposed of by putting them to vote, discussion would be allowed.

Mr. Vice-President: No. It was decided yesterday that honourable members can speak both upon the amendments as well as on the article.

Mr. Hussain Imam: By a discussion other members of the House will also get an opportunity.

Mr. Vice-President: Why did you not stand up?

The question is:

"That for article 29, the following be substituted :

'29. The provisions contained in this Part shall be treated as the obligations of the State towards the citizens, shall be enforceable in such manner and such authority as may be deemed appropriate in or under the respective law relating to each such obligation. It shall be the duty of the State to apply these principles in making the necessary and appropriate laws.' "

The motion was negatived.

Mr. Vice-President: The question is:

"That in article 29, for the words 'the State', the words 'every State' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That Article 29 stand part of the Constitution."

The motion was adopted.

Article 29 was added to the Constitution.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Sir, I said that I will speak on this Article. I stood up, Sir.

Mr. Vice-President: I did not see you. Can you not speak on Article 30?

Mahboob Ali Baig Sahib Bahadur: Article 29 is the most important Article.

Mr. Vice-President: I am unable to go back. I shall give you an opportunity to speak on Article 30.

Shri Amiyo Kumar Ghosh (Bihar: General): Sir, may I know the correct procedure? When a clause is put to the House, is it not the right of a member to speak either in favour of the clause or against it?

Mr. Vice-President: Certainly.

Shri Amiyo Kumar Ghosh: But, I think, Sir, no such opportunity has been given in this case. The amendments were put to vote. When the clause was put to vote, several gentlemen stood up to oppose the entire clause. I think the correct procedure is, after the amendments have been put to the vote and they are lost, the entire clause is put to the House. At that time a member has got the right to oppose it or support it; he may speak on the entire clause. That is the correct procedure.

Shri M. Ananthasayanam Ayyangar: Sir, yesterday you gave a ruling and it was accepted that instead of having two different sets of discussions, there may be one discussion once for all both on the amendments and the Article, and that after the amendments are put to the vote, the Article may be put to the vote without any further discussion, and declared carried or otherwise. That was your ruling and we have been following it. Separate discussions, one for the amendments and another for the Articles are not necessary.

Shri Amiyo Kumar Ghosh: That was not a ruling for the entire Constitution; that was specially meant for Article 3. I think Mr. Ayyangar is laying down a new principle.

Mr. Vice-President: That was the procedure adopted. (*Interruption.*) Kindly allow me to speak. Shall I proceed? (To B. Pocker Sahib Bahadur, who stood up) Do you want to say anything? I am prepared to make way in your favour.

B. Pocker Sahib Bahadur: Sir, I am very sorry to note that Mr. Ananthasayanam Ayyangar is taking upon himself very frequently the duties of the Vice-President himself. (*Interruption*).

Mr. Vice-President: Order, order.

B. Pocker Sahib Bahadur: Sir, he has been giving instructions to the Chair every now and then. In fact.....(*Interruption*).

Some Honourable Members: Withdraw.

B. Pocker Sahib Bahadur: I am quoting a fact, Sir. Just now.....

Shri K. Hanumanthaiya (Mysore): Sir, he is casting-aspersion on an honourable member.

Mr. Vice-President: Order, order.

B. Pocker Sahib Bahadur: I am just quoting facts. He has said just now that the ruling of the Chair is that the questions on the amendments and also questions opposing the clause itself should all be discussed together. As a matter of fact, when Mr. Mahboob Ali Baig came here and wanted to speak against the clause itself, he was told by the Chair that the proper time for him would be when the clause itself is before the House after the amendments are over. Whatever it is, it is for the Chair to decide the question.

Shri Biswanath Das (Orissa: General): Sir, on a point of order. It is to be very much regretted that an honourable member jumps up and goes on to draw the attention of the Vice-President and the honourable members of the House to certain questions which should have been noticed by the Vice-President himself. The very fact that the Vice-President has not taken notice of these goes to show that either he himself desired them or they were his rulings. It is none of the business of the Honourable member to point out to this House or to the Honourable the Vice-President the way in which he should have acted himself. I am sorry to say that it is a reflection on the Chair. Therefore, I would request you, Sir, not to tolerate, much less to allow such disturbances of the proceedings.

Mr. Vice-President: May I suggest that Mr. Ayyangar merely repeated a procedure which had been adopted with the approval of the House in conducting our proceedings. I do not consider that Mr. Ayyangar was wrong in reminding us about what had passed yesterday. I deeply regret that these things should not have been appreciated in the proper spirit by the honourable member speaking. I want that we should work together in complete harmony and that no misunderstanding should spring up. We must come here with clear and open hearts, prepared to trust one another. In democracy it always happens that the minority can only put forward its point of view and try to persuade the majority, and submit to the ruling of the majority. That is what democracy means as I understand it in my poor and inadequate way. Surely, the business of the House can hardly be conducted unless certain rules are followed and followed faithfully, in the spirit and not merely in the letter. As I have already said, if Mr. Mahboob Ali Baig had caught my eye, I would have surely given him an opportunity to speak. In fact, if honourable members will only scrutinise the way in which I have tried to conduct the proceedings of the House, they will find that I have gone out of my way in affording facilities to certain groups which at the present moment feel that they were not sufficiently strong to make their voices heard. That has been my policy, and in that policy, I am grateful that the majority community has lent me its unstinted support. In these circumstances, I would beg you, Mr. Pocker Sahib, to kindly resume your seat and allow me to conduct the business of the House in the way that seems best to me and not to cast reflections, which pain me, either on Mr. Ayyangar who is there to help us, or on myself, who am trying my very best so far as my poor abilities go, to conduct the business to the entire satisfaction of the House. Will you please resume your seat?

B. Pocker Sahib Bahadur: Sir, I do not want to say anything more except to thank you for the kindly way in which you have expressed your anxiety to give every facility to people who are in the minority. I must also apologise to you if you take it that I in any way meant any reflection on you

or on Mr. Ayyangar. I only wanted to bring to your notice how we misunderstood what you stated and that we thought that we had further opportunities after all the amendments are discussed. I am thankful to you, Sir, for the way in which you have expressed your anxiety to give opportunities to the minority to express themselves.

Mr. Vice-President: May I make one suggestion? When such a kind of understanding has been given by me namely that an honourable member will speak on a particular occasion, for the time being, he may occupy a front seat so that he may not experience much difficulty in catching my eye. Let me assure the House once again that I shall do whatever lies in my power to give every possible facility to the members of the minority communities.

Mr. Hussain Imam: May I ask for elucidation of your ruling, as I was not present when this ruling was given. Therefore I want for the guidance of the House that it should be elucidated first. My own impression was that by your ruling what was meant was that members who were speaking on amendments should not claim a second right of speech on the main motion itself. It was never meant that as soon as an amendment is moved and the mover of the article says whether he accepts or rejects it, the discussion ends. That only means that the discussion as far as that particular amendment is concerned is ended, but the discussion on the main article can continue and in that connection I will remind you that I stood up as soon as Dr. Ambedkar had intimated his opinion on the amendments and therefore I was perfectly justified—and I had caught your eye—to express my opinion on the article. It is on that restricted line that I want your ruling as to whether my understanding is correct or I am wrong.

Mr. Vice-President: Let me explain it. First of all the amendments are moved and members moving them can also speak on the clause as a whole. Then there is opportunity given to Honourable members to discuss the amendments as well as the article itself and after that Dr. Ambedkar replies and that closes the discussion. That is how I have tried to understand it and that will be the procedure which will be followed hereafter.

Mr. Hussain Imam: It is not clear whether the discussion on the general article itself closes. The discussion on the amendment can close, not the general discussion.

Shri Ram Sahai [United State of Gwalior-Indore-Malwa (Madhya Bharat)]: *[Mr. President, I would like to submit that many members do not like to express their views on the amendments that are moved here and to participate in the debate on them, because they consider them to be meaningless, useless and devoid of any utility. If it continues, the result would be no discussion on the original clause. Therefore, I submit, Sir, that since members do not like to speak on the many amendments that are being moved here, they simply fall through. In my opinion, it is much more necessary to speak on the original clause and consider it fully.

Therefore I would submit that the amendments that are useless and are moved for no reason should be ruled out and we should devote ourselves to a fuller consideration of the original clause.]

Mr. Mohamed Ismail Sahib (Madras: Muslim): Mr. Vice-President, Sir, while I appreciate the consideration you have been showing to the House, to the various sections of the House, I want this point to be made clear. Now suppose several amendments are being moved to a certain article. Then those amendments are discussed and afterwards replied to by the Honourable Mover of the Resolution. I want to know whether after the reply is given by the Honourable Mover I mean the Law Minister, the article is not before the House for general discussion. Because the amendments may relate only to certain parts of the article. There may be other parts on which honourable members

* [ ] Translation of Hindustani speech.

[Mr. Mohamed Ismail Sahib]

might have something to say. Therefore I request you to make it clear whether after all the amendments are disposed of, Members have got a right to speak on the article itself.

Mr. Vice-President: What I said was this; suppose there are four amendments. They are moved one after another. Between the moving of the amendments and the reply by the Chairman of the Drafting Committee there is an interval during which other members may participate in the discussion and they might talk not only about the amendments but about the clause itself.

Mr. Mohamed Ismail Sahib: My point is after the amendments are disposed of by the House, whether the members have not got the right to speak on the article as amended or not as amended—that is what I want to know. The members should in fairness be given an opportunity to speak on the article.

Mr. Vice-President: They have that opportunity.

Shri M. Ananthasayanam Ayyangar: Mr. Vice-President, that opportunity means once again after Dr. Ambedkar has spoken?

Mr. Vice-President: No.

Shri M. Ananthasayanam Ayyangar: It is rather strange that persons who have been in Legislatures should make this objection. We know that the Resolutions are first moved and then all amendments are asked to be moved on the particular clause or resolution. Then both the resolution and the amendments are open for discussion. Thereafter the amendments are put to vote and then the clause is put to vote. There is no scope for a general discussion once again on the clause. There should be no departure from this practice which is followed in the Dominion Legislature.

Mr. Vice-President: I do not think it is profitable to continue the discussion. The ruling is final. I shall not permit further discussion.

Nawab Muhammad Ismail Khan (United Provinces: Muslim): After the amendment has been moved.....

Mr. Vice-President: I am afraid you fail to appreciate the fact that the decision has been given. I am not prepared to reopen the discussion.

Nawab Muhammad Ismail Khan: In order to facilitate discussion, after amendments have been moved the Chair may please say that the article is now open to general discussion so that people may rise to speak on the motion.

Article 30

Mr. Vice-President: The motion before the House is:

"That article 30 form part of the Constitution."

The first amendment stands in the name of Mr. Naziruddin Ahmad. This is out of order. The second amendment is in the name of Mr. Damodar Swarup Seth.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I move that for article 30, the following be substituted:

"30. The State shall endeavour to promote the welfare, prosperity and progress of the people by establishing and maintaining democratic socialist order and for the purpose the State shall direct its policy towards securing :—

(a) the transfer to public ownership of important means of communication, credit and exchange, mineral resources and the resources of natural power and such other large economic enterprise as are matured for socialisation;

(b) the municipalisation of public utilities;

(c) the encouragement of the organisation of agriculture, credit and industries on co-operative basis."

Sir, my reason for submitting this amendment is that I feel that as it is worded, the article is somewhat indefinite and vague, and does not convey any clear indication as to the economic nature of the social order to be established. We all know that the society in which we now live is of a capitalistic order or character and in this society we see the exploiter and exploited classes both existing side by side; and the exploiting class is naturally the top-dog and the exploited class the under-dog. In such a society we clearly see that the real welfare of the masses, of the toiling millions can neither be secured nor protected, unless the society is made clear of the exploiter class, and that can only be possible when we establish a socialist democratic order, and transfer to public ownership the "important means of production, communication, credit and exchange, mineral resources and the resources of natural power and such other large economic enterprise as are matured for socialisation;" bring about the "municipalisation of public utilities"; and "the encouragement of the organisation of agriculture, credit and industries on co-operative basis".

So far as I know, the Indian National Congress in its election manifesto promised the transfer of ownership of the means of public utilities, communication, production, credit, exchange, to the ownership of the public. The Economic Committee's Report of the Congress also accepts this principle. Without that, we are not going to establish a social democratic order in which the real welfare of the masses will be secured. Let it not be said of us, Sir, that we made promises simply to break them, as was done by the British Government. Here we talk too much about democracy and the welfare of the masses. But in practice, we see actually that there is little or no democracy. The will of the ruler even to-day prevails, in the form of the law. If we really want that something should be done for the masses, and their real welfare secured, that can only be possible through a socialist, democratic order. And if we are really keen to establish such an order, we should lay down in this Constitution that the order which we are going to establish will be a socialist democratic or democratic socialist one. The wording should be as clear as possible so that its meaning may not be changed when it is in the interest of the ruling classes to do so.

With these words, Sir, I submit this amendment for the acceptance of this Assembly.

Mr. Vice-President: No. 864 is the same as No. 863. Therefore it need not be moved. Is 867 moved?

Mr. Naziruddin Ahmad: Yes, Sir, I move it. I beg to move:

"That in article 30, the words 'strive to' be omitted."

Sir, the article in the passage runs to this effect—"The State shall strive to promote the welfare of the people....." I want the removal of the words 'strive to'. The article, would then read as follows:

"The State shall promote the welfare of the people."

I submit, Sir, that by providing that these rights shall not be justiciable, this Article has been sufficiently weakened, and by again putting in the words "shall strive" to promote the welfare of the people, the Article has been still further weakened. I submit, Sir, that if these rights are to be introduced in the Constitution, they should be that the "State shall promote the welfare of the people", not merely "strive to". As it is, it would mean that the State is not expected actually, to promote the welfare of the people, but merely strive to do so. In this weakened and diluted form, I think it is worse than useless. Therefore, in order to give the article some practical meaning, these words must be removed.

Shri H. V. Kamath: Sir, I move amendment No. 870:

"That in article 30, the word "The" occurring before the words "national life" be deleted."

[Shri H. V. Kamath]

Sir, I was rather reluctant to give notice of this amendment, considering that it is of a minor character; but somehow the word 'the' jarred upon my ear and ultimately I decided to send it on. I am not so presumptuous as to advise my learned friend Dr. Ambedkar or his wise colleagues of the Drafting Committee on matters of language; but I do hope that in this case, the word 'the' jars upon their ears as much as it does on mine, and it does violence to the laws of euphony. So I request him to omit it.

The Honourable Dr. B. R. Ambedkar: I accept the amendment.

Mr. Vice-President: No. 871 not moved.

Now the Article is open for general discussion.

Mahboob Ali Baig Sahib Bahadur: Sir, I oppose the amendment of Mr. Damodar Swarup Seth (No. 863) as well as the Article itself. The reason is that the amendment seeks to import into the constitution certain principles of a particular political school. My view is that in a constitution no principles of any school of political thought should be incorporated. For the same reason I oppose the clause itself. This question of directive principles of State policy should be examined from two points of view, i.e., democratic principles and secondly, the enforceability of those principles. With regard to the first you know that in the Preamble to the constitution a democratic republic or State is envisaged, and in the body of the constitution the type of democracy which is commonly known as parliamentary democracy is embodied. And the executive which is embodied in the constitution is what is termed the parliamentary executive which comes into power on account of the majority of a particular party having been elected by the electorate; and that executive is responsible to the people through the parliament. Therefore inevitably there would be parties in the country which seek election to parliament and these political parties have different and distinctive ideas, ideals, ideologies, programmes and principles. Sometimes they are so different that they can be called antagonistic; and it is on the merits of the principles or programmes of particular parties that the electorates return them to parliament. And when a particular party is returned in a majority and is entitled to form the government, the people and the electorate have got a right to expect the implementation of those programmes and principles. That is what is meant by parliamentary democracy as it obtains in the United Kingdom, and which is sought to be embodied in this constitution. Now the question is, in these circumstances what is the place of these directive principles of State policy in a parliamentary democracy in which the executive is made responsible to the parliament which has been chosen and elected on the merits of the principles and programmes laid down by that party? That is the most important thing for us to consider. We can conceive of cases where a party which has been returned by the people has programmes and principles which are contrary to the principles that are laid down in this Chapter. Recently we know that in the British Parliament the Conservatives have moved for the rejection of nationalisation of iron and steel. Yesterday we heard there was an uproar. It was no doubt defeated by the Labour Government; that clearly shows that political parties have different and distinctive programmes, and it is on their merits that the parties are returned to parliament in a parliamentary democracy. When that is the position envisaged and embodied in this constitution, what is the place of these directive principles in it? They have obviously no place. It is undemocratic, opposed to parliamentary democracy which is envisaged here. Is it the purpose of these principles to bind and tie down the political parties in the country to a certain programme and principles laid down in this? Surely not; that will not be democracy or at least democracy of the type that is envisaged here, viz., parliamentary democracy which is responsible to the people. Therefore my submission is that these principles are out of place and contrary to the principles of parliamentary democracy.

Now it is said by some that these are fundamental principles. I submit that if they are so fundamental they cannot be changed except by amendment of the constitution, and should not find a place here. In fact my own view of fundamental rights is that they are those which are taken away from the purview of the legislature; they are so fundamental that no party can veto them. If all those rights that are embodied here are so fundamental they must be transferred to the Chapter of Fundamental Rights. I consider that most of them are not fundamental rights but only items of programme of certain schools of political thought. Therefore I submit that these clauses must not find a place here at all; and I believe it is for that reason that Dr. Ambedkar while opposing a programme of this kind embodied in an amendment of Prof. K. T. Shah with regard to the panchayat system said that this constitution is only a mechanism whereby any party which has come into power may utilise it and implement its programme according to its political thoughts, principles and programmes. That is quite right. Now I fail to see how this programme can come into the constitution. Either they are fundamental or they are matters of policy. If they are so fundamental that no legislature can interfere with them and have to be placed beyond the purview of the legislature and the executive, they should be placed somewhere else. In my view, however, these are not fundamental but mere State policy. And Dr. Ambedkar was right wher he said that this is only a mechanism and any party which comes into power might implement its principles and programmes, ideals and ideologies.

Now, Sir, we next have to see whether there is any enforceability. In a Constitution like this, except where discretion is given to the Governor or the Governor-General or some other authority to act in this way or that way, no clause should find a place which cannot be enforced. Supposing a Government which comes into power does not care about these things, neglects them and ignores them because it has a different mandate from the people. The people have accepted its programme and the guidance that you have provided here is such that it goes against the mandate given to the party by virtue of their having been returned to power: not only that, it neglects them and goes out of the way and does something contrary. What is going to happen? Who is to judge?

It is said by my friend, Mr. Ananthasayanam Ayyangar that the country will judge. The country does not judge these directive principles. It judges the ideals, programmes and the principles of the concerned parties. That is what is called parliamentary democracy. Therefore I submit that not only Article 31 but all the articles that follow—the whole Chapter—has no place. It may be that a certain party thought that unless certain principles are introduced in the Constitution itself by a Constituent Assembly where it has a majority, perhaps in the country political parties might take objection, might canvass support for themselves and against the party at present in power. May be that is the reason. Or perhaps they think these are fundamental rights. One of these reasons must be there. I am sure they cannot be called fundamental rights. So it is the anxiety of the party in power to placate the electorate, saying we have framed a Constitution in which we have made these provisions which are as good, if not better than the principles and programmes of some other party, say the Socialist Party.

So, I submit that these principles are wrong. They do not find a place in the Constitution and on account of the fact that they cannot be enforced they are useless and they had better be deleted.

Shri K. Hanumanthaiya: Sir, I have to oppose the amendment moved by my Socialist friend, Shri Damodar Swarup Seth and I request the House to give its full support to the Article as it stands. If the Honourable Member who moved amendment No. 863 carefully reads article 30, as well as article

[Shri K. Hanumanthaiya]

31, clauses (1) and (2), he will surely find that all the ideas he wants to incorporate are contained therein. In fact the previous speaker, Mr. Baig based his opposition to the amendment and to the original clause on this very reason. What he wants to achieve by his amendment is there already—in these two clauses—and therefore, it is completely superfluous to accept this amendment.

As for Mr. Baig, it has become the fashion of his school of thought always to fling a remark at the majority party and I can only say his argument suffers from "Grapes are sour" psychology. Merely because he is in a minority today, he chooses to fling remarks now and then in this fashion. If a particular school of thought persuades the country to be with it, there is nothing sinful or immoral or objectionable in that. The fact that he has not been able to do so is a disqualification in his favour. Instead of admitting this, he cannot go on throwing stones at the majority party in this fashion. The same applies to his argument that this particular section or article wants to bring a particular type of Government into being. It was the case that several centuries back it was a sin to talk of democratic government in this country. It was a question then of a particular king ruling or a particular emperor ruling. The days of one individual or one section of people ruling a country have gone for ever. Now it is a democratic age. It is the people's government. A particular type of Government holds sway over the people and the State at a particular time. There was a time when individualism and *laissez faire* policy held sway over Governments. That policy has now been given up. It is now a question of socialization. Now the trend of the time is socialism and that holds the field. Many Honourable Members of this House want to go even in advance of the ideals stated in the Articles. But the Drafting Committee has very happily worded the phraseology which does not favour any of these extremes, and at the same time, it has been so wisely worded that even Communist Party can implement its ideology under article 30 and article 31, clauses (1) and (2), if it comes to power. No party is prevented from implementing its ideology under these sections. If anybody reads the wording of the section he will find—as I for one do—it is difficult to say to what word or to what sentence he can take objection. Therefore, Sir, amendment No. 863 is superfluous and the Article as it stands deserves the full support of this House.

Mr. Hussain Imam: Mr. Vice-President, I regret that it is not possible for me to give my full support to Damodar Swarup Seth nor can I admire the Government or the movers, or those who are behind this article at their great fear of bringing forward anything which will smack of socialism. I regret, Sir, that the Government has succeeded neither in placating the capital nor the labour. . . .

Shri T. T. Krishnamachari (Madras: General): What has this House got to do with the Government?

Mr. Hussain Imam: I am stating facts as they exist. The articles are being governed by a party and under party whips amendments are stopped . . . .

Mr. Vice-President: Order, order.

Shri M. Thirumala Rao (Madras: General): My friend wants to say some facts. Should they not be relevant to the subject under discussion?

Mr. Hussain Imam: Let me have my say. You can then say what you like. Mr. Gautam had a similar amendment.

Shri Mohan Lal Gautam (United Provinces: General): Was I called on to move it?

Mr. Hussain Imam: No, Sir.

Mr. Vice-President: Please address the Chair and do not carry on an argument among yourselves; otherwise, I might as well vacate the Chair. I will give him opportunities to criticise the article, but not any particular political party. So far as this House is concerned, there is no political party in existence.

Mr. Hussain Imam: I will follow your advice, Sir. I would mention one fact. The directive principles have laid down a number of liabilities on the future State. What the amendment proposes to do is to supply some assets to meet the liabilities created by the Constitution as it is going to be framed. In that way I welcome the suggestion for a mild type of socialisation. The socialisation envisaged in this amendment is not a full-fledged socialisation. For instance, it does not include the nationalisation of land which is at present the active policy of many of the States in India. Therefore to say that the mover wants to make any revolutionary change or fundamental change is wrong. It must be remembered that we are creating liabilities for the future State of India saying that it shall do this, that and the other. Is it wrong to attempt to place some funds also at the disposal of such a State?

Let me remind the House that when the Eighteenth Amendment to the American Constitution was brought forward to introduce Prohibition, the fact that nothing of that nature (about Prohibition) existed in the Constitution of the United States of America did not prevent the Eighteenth Amendment being moved. Similarly, when the Amendment was repealed six years afterwards, there was nothing in the Constitution to stop it. Is there any provision in the British Constitution for nationalising mines, the State Banks and the Iron and Steel industries? There is no provision and yet they are doing all this. If the existing Constitution is not a bar to the Labour Party bringing in socialist changes, I fail to understand how the provision made in this amendment would prevent the Conservative Party from coming to power and not enforce these measures? This is not a justiciable right. It is just a directive principle of State policy. A political party in power can ignore these directive principles and there is no provision anywhere making it obligatory on the party to see that these directive principles are followed. Not even the President of the Union has been authorised to put his foot down when he sees a State government going against the directive principles. I therefore suggest that bringing forward of this amendment will not prevent a certain political party from coming to power and there is nothing wrong. These directive principles, as they have been laid down, are singularly inoperative. They merely say that if the people and the Government are good they will observe these directives. I do not think there is any need for having any inaffectual directives at all. It is only when you provide a law or fix a certain standard that you have to provide for those who are not up to that standard. It is just to prevent transgression. And where is the provision here to prevent this? All the directive principles can be ignored by the State Governments and there is no remedy for it. Even the President of the Union cannot do anything to see that the directive principles are observed. The Central Legislature cannot bring forward any motion for the Government which ignores these directive principles to be dismissed or some alternative being adopted. In the Instrument of Instructions issued to Governors under the Government of India Act there was authority given to the Central Government or Secretary of State to see that those instructions are carried out. But here we have provided nothing like that. At least I do not find anything like that and I shall be obliged if Dr. Ambedkar will point out to us any method by means of which transgressions by the Governments of the States of the directive principles can be proceeded against. There must be some method of intervention by the Legislature. The provincial legislatures cannot intervene because the provincial Governments are responsible Governments. If there happens to be a going back on the directive principles, it is not the Ministers alone, but the

[Mr. Hussain Imam]

entire legislature that would be responsible for it. So, there must be some superior authority to examine whether the directive principles are followed or not. Unless some provision is made on these lines it will only go to prove what one Honourable Member suggested, viz., that these principles have been brought in just to silence criticism and to have a good sign-board that we have good intentions, without having any intention of following those directions. I therefore suggest that the House should examine the amendments rather more dispassionately and, if there is anything good in these amendments, because of the fact that they have been brought forward by a Member who is not *persona grata* with the majority, they should not be rejected. We are framing a Constitution and in that connection I appeal to the House to be more generous, more conciliatory and more sympathetic and accept the things as they are and not think that by means of these amendments some party will gain advantage. It is not so. It is very necessary that some kind of provision for socialisation should be there. I say this though I do not go as far as Shri Damodar Swarup. But let us give some indication of our trend of thought in our Constitution. Take the case in question of the nationalisation of coal mines accepted by the British Government long ago as an ultimate goal. The Committee which reported on this question in 1935 accepted it as the ultimate goal, though there was then a Conservative Government in power in England. I suggest that these amendments should be dispassionately considered and if there is anything good in them it should be accepted by the Mover of the draft Constitution.

Shri Mahavir Tyagi (United Provinces: General): Sir, from the point of view of making a Constitution for our country, this Article is of great importance. It contains at least a fourth part of the aim which we have in view. For, in the Preamble we say that we are drawing up this Constitution with the aim of securing Justice, Equality and Fraternity. Sir, this clause is the only clause which directly deals with justice and justice has been defined here as justice, social, economic and political. In fact, Sir, it accommodates all that we desire. It accommodates all the revolutionary slogans in a particular form. It is social and economic justice that is demanded by the most radical of the radicals of the world. This clause is in fact the pivotal point in the Constitution, but still I am inclined to criticise its language. The clause from the language point of view is not strong; it is very halting. Our aim in framing this Constitution is to secure social, economic and political justice, but in the clause as it is worded, unfortunately there are so many halting sub-clauses. It says, "The State shall strive to promote". I think the amendment moved by my honourable friend, Mr. Naziruddin Ahmad, makes the clause read better.

Shri Rohini Kumar Chaudhari (Assam: General): On a point of information, Sir, as the honourable member is supporting this clause, may I ask him kindly to explain the word "inform" used in this clause.

Shri Mahavir Tyagi: "Inform" means animate the institutions of national life. "Inform" is the most idiomatic word which is used in that clause. It adds beauty to the clause. "Inform" means that in the making of the institutions justice should be the foundation. You should not take the word "inform" in the ordinary meaning of the Information Department.

Sir, this clause is very halting. I appeal to Dr. Ambedkar and his other colleagues to accommodate the wishes of the House on all sides. When we want to put something real in the Constitution, why should these lawyers come between our wishes and the Constitution? They should make it absolutely plain that the purpose of the Constitution is to secure justice, social, political and economic. So, Sir, why should they introduce the words "strive to"? Suppose a man wants a recommendation from me and I say, "I will *try*",

it means that I have not given a promise. Why not say, "The State shall promote"?

Then it goes on to say, "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, etc." Why introduce so many halting phrases in this clause? Why say, "as it may"? If a government cannot do it, we do not want that government. If a State cannot do it, of what use is that State to us? The function of a State is taken to be only the maintenance of law and order by means of the army and the police. We do not want a police state. In fact, all order and tranquillity which reigns over mankind is not the effect of any government in the world. Its origin lies in the principles of society. Order would remain intact, even if the formality of having Governments had been done away with. The desire to associate is an instinctive feature of man, and so the credit for the peace and tranquillity of the world goes to the individuals who make up the society. The first and the foremost duty of a Government is to promote the welfare of the people. That is why governments are there. If a Government cannot do this, they should have the honesty to move out and give place to others. Sir, it must be made incumbent on the State to promote the welfare of the people by securing justice, social, economic and political, without introducing the words "as it may". I appeal to Dr. Ambedkar to listen to the advice of those who have come here from the people and also of those like me who have no legal knowledge gained in law colleges, in England or elsewhere—unfortunately my education has been my experience of the people—I therefore plead and request the House to accommodate the wishes of the people. I hope the wordings of this clause will be changed by my lawyer friends with a view to make it incumbent on the Government to promote the welfare of the people. I am not a man of words; I am a man of ideas and action. I can only give ideas. Dr. Ambedkar is a man of words and therefore he may be able to devise suitable words to convey the idea. This clause must be made very strong and unequivocal. It should be made the first and foremost duty of the Government to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political shall inform all our institutions. If this suggestion of mine is accepted, the most radical of radicals will be accommodated.

Shri Mohanlal Gautam: Is the discussion going to be closed now?

Mr. Vice-President: I have given a reasonable time for discussion, both for and against the amendments.

Shri Mohanlal Gautam: Will you please permit me to speak?

Mr. Vice-President: I maintain that we have had a reasonable amount of time—merely an hour—for discussion and Dr. Ambedkar should now address the House.

Shri Mohanlal Gautam: My submission is that I gave notice of an amendment. It is only a chance that Seth Damodar Swarup's amendment was placed at the top and mine below it and therefore, you did not think it desirable or necessary for me to move it. I stood twice or thrice and I am unfortunate that I was not given a chance to speak on my amendment.

Mr. Vice-President: I think the amendment was discussed at full length and I do not think there is any use moving it now.

Shri T. T. Krishnamachari: Certain observations have been made by a member in regard to the manner the Congressmen in this House are acting. I think, Sir, it is the duty of the Congressmen to repudiate this statement. May I ask you, Sir, to give us an opportunity of repudiating those charges which have been levelled against us?

Mr. Vice-President: I think we had better close the discussion here.

Shrimati Renuka Ray (West Bengal: General): I think this is very unfair.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I see that there is a great deal of misunderstanding as to the real provisions in the Constitution in the minds of those members of the House who are interested in this kind of directive principles. It is quite possible that the misunderstanding or rather inadequate understanding is due to the fact that I myself in my opening speech in support of the motion that I made, did not refer to this aspect of the question. That was because, not that I did not wish to place this matter before the House in a clear-cut fashion, but my speech had already become so large that I did not venture to make it more tiresome than I had already done; but I think it is desirable that I should take a few minutes of the House in order to explain what I regard as the fundamental position taken in the Constitution. As I stated, our Constitution as a piece of mechanism lays down what is called parliamentary democracy. By parliamentary democracy we mean 'one man, one vote'. We also mean that every Government shall be on the anvil, both in its daily affairs and also at the end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the Government. The reason why we have established in this Constitution a political democracy is because we do not want to instal by any means whatsoever a perpetual dictatorship of any particular body of people. While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy. We do not want merely to lay down a mechanism to enable people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the Government. That idea is economic democracy, whereby, so far as I am concerned, I understand to mean, 'one man, one vote'. The question is: Have we got any fixed idea as to how we should bring about economic democracy? There are various ways in which people believe that economic democracy can be brought about; there are those who believe in individualism as the best form of economic democracy; there are those who believe in having a socialistic state as the best form of economic democracy; there are those who believe in the communistic idea as the most perfect form of economic democracy.

Now, having regard to the fact that there are various ways by which economic democracy may be brought about, we have deliberately introduced in the language that we have used, in the directive principles, something which is not fixed or rigid. We have left enough room for people of different ways of thinking, with regard to the reaching of the ideal of economic democracy, to strive in their own way, to persuade the electorate that it is the best way of reaching economic democracy, the fullest opportunity to act in the way in which they want to act.

Sir, that is the reason why the language of the articles in Part IV is left in the manner in which this Drafting Committee thought it best to leave it. It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing. It is, therefore, no use saying that the directive principles have no value. In my judgment, the directive principles have a great value, for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of Government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal, as to what our social order ought to be, we deliberately included the Directive Principles in our Constitution. I think, if the friends who are agitated over this question bear in mind what I have said just now that our object in framing this Constitution is really two-old: (i) to lay down the form of political democracy, and (ii) to lay down that our ideal is economic democracy and also to prescribe that every Government

whatever it is in power, shall strive to bring about economic democracy, much of the misunderstanding under which most members are labouring will disappear.

My friend Mr. Tyagi made an appeal to me to remove the word 'strive', and phrases like that. I think he has misunderstood why we have used the word 'strive'. The word 'strive' which occurs in the Draft Constitution, in my judgment, is very important. We have used it because our intention is that even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfilment of these Directives. That is why we have used the word 'strive'. Otherwise, it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go. I think my friend Mr. Tyagi will see that the word 'strive' in this context is of great importance and it would be very wrong to delete it.

As to the rest of the amendments, I am afraid I have to oppose them.

Mr. Vice-President: Only two amendments have been moved; I shall put them to vote. The first is amendment No. 863 by Shri Damodar Swarup Seth. The question is:

"That for article 30, the following be substituted :—

')30. The State shall endeavour to promote the welfare, prosperity and progress of the people by establishing and maintaining democratic socialist order and for the purpose the state shall direct its policy towards securing :—

(a) the transfer to public ownership important means of communication credit, and exchange, mineral resources and the resources of natural power and such other large economic enterprise as are matured for socialisation;

(b) the municipalisation of public utilities;

(c) the encouragement of the organisation of agriculture, credit and industries on co-operative basis."

The amendment was negatived.

Shri H. V. Kamath: I am not pressing my amendment, Sir.

Mr. Vice-President: The next one is amendment No. 867 by Mr. Naziruddin Ahmad.

The question is:—

"That in article 30, the words 'strive to' be omitted."

The amendment was negatived.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, Mr. Kamath must have the leave of the House to with draw his amendment.

Mr. Hussain Imam: The Mover has accepted the amendment!

Mr. Vice-President: Does the House give him leave to withdraw?

Several Honourable Members: Yes.

Shri L. Krishnaswami Bharathi: I object to leave being granted.

The Honourable Dr. B. R. Ambedkar: If he wants to withdraw, I have no objection; let him withdraw.

Shri H. V. Kamath: There seems to be some conflict in the House over this. One Honourable Member thinks that Dr. Ambedkar has accepted it. I did not know that he had accepted it. If he has accepted it, then, no question of withdrawal arises.

Mr. Vice-President: Do you wish to withdraw?

Shri H. V. Kamath: Yes.

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

Mr. Vice-President: The question before the House is:

"That Article 30 stand part of the Constitution."

The motion was adopted.

Article 30 was added to the Constitution.

Shri Mahavir Tyagi: Does this clause pass with the word 'the'?

Mr. Vice-President: It has been passed as it stands now.

New Article 30-A

Kazi Syed Karimuddin: Mr. Vice-President, Sir, I move:

"That after article 30, the following new article be inserted :—

'30-A. The State shall strive to secure prohibition of manufacture, sale or transportation or consumption of intoxicating liquors for beverage purposes.'"

I need not give a very long lecture in this respect. In the American Constitution this has been described as a Fundamental Right. I will read Amendment 21 of the American Constitution:

"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Sir, it is a fact known to everybody that Mahatma Gandhi was preaching all his life that the use of liquor and the manufacture of liquor should be prohibited in India; and in fact in keeping with that policy the Provincial Governments in India have been framing laws and are applying those laws. I am really surprised that in the Constitution which is drafted, there is no mention about the prohibition or manufacture or sale of liquors in India. We know that thousands of families have been ruined and are miserable on account of this evil. In the directive principles of the State, which according to Dr. Ambedkar have no sanction, they ought to have been embodied because the State would have tried their utmost to secure prohibition of liquors. The rejection of this additional clause will be the rejection of the wishes of Mahatma Gandhi.

Mr. Vice-President: Amendment No. 873—not moved. Any Member who wishes to speak on amendment 872 may please do so now.

Prof. Shibban Lal Saksena: Sir, my friend Kazi Karimuddin Sahib has raised a very important issue. Although I could not agree that a separate clause for this is necessary here, but I do wish that in clause 31 there should be a sub-clause incorporating that the State Policy is prohibition. In fact the Congress from the very beginning since 1920 has pleaced prohibition as one of the chief planks of its struggle. Many of us have gone to jail for picketting liquor shops and today shops and I do not think it is proper that in this Constitution when we are laying down the Directive Principles of State policy we should not make mention of prohibition. Of course there is a general clause in part (vi) of 31 which says:

"That childhood and youth are protected against exploitation and against moral and material abandonment."

Of course its meaning is almost the same but that is far too general and I think that prohibition is something so important that this should be mentioned as one of the sub-clauses in article 31. I hope on this matter it is not necessary to give long arguments as it is well-known that many of our Governments have already declared several districts dry. Madras has the honour of declaring first the whole of the province dry. We do not wish to live by the excise revenue which is in fact the revenue got by the ruin of so many labour class families. I therefore think that in our country, when all the religions are unanimous about prohibition, this amendment of Kazi Karimuddin should be mentioned somewhere in Article 31. Because this is something on which the entire House is unanimous, I hope Dr. Ambedkar will see to its inclusion.

Seth Govind Das (C. P. & Berar: General): Sir, I do not wish to press Honourable Dr. Ambedkar to accept this amendment but at the same time I entirely agree with my honourable friend, Prof. Saksena that we are pledged to the policy of prohibition. Everybody knows that in spite of the reduction in revenue in various provinces we follow this policy. It is true that up till now complete prohibition is not there in every province, yet an effort is being made to bring about complete prohibition not only in the provinces but in the Centrally administered areas also. Now, Sir, it would really not be in accordance with our traditions that when we are making a new Constitution for our land, no mention is made about prohibition. I hope that the Honourable Dr. Ambedkar and the Drafting Committee will find out, if this amendment is not accepted, a suitable place in the constitution where a reference is made to prohibition and I think that every community of this land, Hindus, Muslims, Christians, Sikhs, Parsees and others will agree that the principle of prohibition must be accepted in this country and our Constitution should say something with respect to prohibition. Though, Sir, I am not in a position to support the amendment I would request the Honourable Dr. Ambedkar to make the policy in this respect clear.

Mr. Mohamed Ismail Sahib: Sir, I have got the honour to support the amendment that is placed before the House. Sir, you know with regard to the principle underlying this amendment there has not been and there is not any difference of opinion amongst any section of people. Almost all sections political or otherwise, are agreed upon this principle. Therefore, Sir, one would have expected the Government to have made this principle the subject-matter of even a mandatory and statutory article. It is really a very mild amendment to say that this principle on which there is no difference of opinion in the country should be made at least part of this Part, viz., of Directive Principles. I therefore, Sir, earnestly request the Honourable the Mover to accept this amendment; though he may not accept it as part of article 30, he may, as was suggested by one or two of my friends, make it part of article 31. I would request him once again to make prohibition find a place in the Constitution because there is absolutely—I may say almost absolutely—no difference of opinion in the matter. Whatever may be the loss in the matter of revenue, people are agreed that the Government must find other ways and means of revenue and should enforce this principle which the Congress Party as well as the other parties had been advocating for decades.

Shri Biswanath Das: Sir, I am very sorry I have to oppose my honourable friend, the mover of the amendment: my grounds are there. We have been—I mean the nationalist sections of the country have been—wedded to the principle of entire prohibition but unfortunately my honourable friend wants and proposes as a Directive part of the Constitution that we should prohibit only the manufacture and consumption of liquor. What becomes of opium? Opium is the worst evil that is prevailing in the country. Sir, China and the eastern countries are in their precent position because of opium-eating. Therefore, I for myself would not be a party to any prohibition if it does not include the prohibition and manufacture of opium for purposes of consumption.

Sir, I am not in favour of having a reform of this magnitude to be put in the directive principles in the Constitution. I consider the Directive Principles of the Fundamental Rights in the Constitution as the Sermon on the Mount. Shri Bhagavat has stated that there is nothing like small and great but fact remains that there are small and great. Therefore nothing will be gained by putting all and sundry in the Fundamental Rights. Under these circumstances I feel that any additions to what we have already is going to serve no useful purpose. We are wedded to democracy. We are going to have a national government. A National Government even today led and guided by not less

[Shri Biswanath Das]

persons than Pandit Jawaharlal Nehru and Sardar Patel will not have their way if they do not carry the people with them. That being the position, I do not see why the question of prohibition should come in at all here as a Sermon on the Mount. Sir, despite the difficulties, despite the financial stringencies, despite various limitations, the provincial Governments in Madras and other Provinces have already adumbrated the reform. I plead patience with friends. For myself I want an all-India policy in which the provinces and the States should go on together fighting against this mighty demon of drink and opium consumption.

Under these circumstances I do not see how any useful purpose could be served by only putting this in the framework of the Constitution as a Directive Principle. Directive Principles are of course useful and they will serve as a beacon light to the incoming ministries. They will serve as a sort of test for the work of the Ministry after the term of office of five or three years. As test, they remain for ever, but that does not bring us anywhere near our goal if we include this in the Constitution and keep it as a Directive principle. Under the circumstances I am strongly opposed to this addition which will mean nothing more than another Sermon on the Mount. Sir, I want a practical step to be taken and the practical step is being taken, despite difficulties, and I have no hesitation in believing that the installation of a national Government of India, guided and led by a Ministry which is responsible to the Honourable Members of the Constituent Assembly or the National Parliament, will have no other option than to take up this great reform on hand without any delay. Sir, despite difficulties, even the Central Government, ridiculous though it looks, is thinking of having prohibition in the province of Delhi. I state all this merely to show the anxiety of the Government. I again appeal to the Honourable the Mover that nothing can be gained by appealing to sentiments in the name of Mahatma Gandhi. We must look to the practical aspect of the question, and nothing will be served by putting this in the Directive Principles. Under these circumstances, I stand opposed to the amendment.

Shri Mahavir Tyagi: Sir, I have a similar amendment, and that is No. 999; but a practical joke has been played here and my amendment has been completely reversed by the omission of two words. I do not know where and at what time this clerical mistake has occurred or when. My amendment reads thus—

Mr. Vice-President: But I cannot permit you to move your amendment now.

Shri Mahavir Tyagi: No, Sir, I am only quoting it. It reads:

"That at the end of article 38, the following words be inserted :—

'and shall endeavours by means of both temperance and prohibition the use by mouth of liquor and other intoxicating drugs except on medical grounds'."

The words should be "shall endeavour to stop by means of both temperance and prohibition. . . . . etc." I am reminded of a couplet in Urdu which with your permission I will repeat—

Ilahi hamse mai khawaron ko
woh dunya ata hoti;
Jahan hukman piya Kerte,
na pite to saza hoti.

Well, Sir, on this occasion, I have come to oppose this amendment, not because I disagree with its contents but because he has suggested it a bit too early. I feel that the amendment of Syed Karimuddin is one to which we can have the support of an overwhelming majority of this Assembly. But my difficulty is that this is not the proper place where this amendment should come up. My friend wants it to come in as article 30-A. My suggestion

is that it should come below article 31 where all the directives have been enumerated; that is the proper place for his amendment.

That there must be prohibition is admitted to by all. I submit that Gandhiji's foremost plank of constructive programme was prohibition (*cheers*), and we all stand pledged to this programme; we had pledged in front of Gandhiji. We have repeated that pledge tens of times every year on Independence Days and now we cannot falsify that pledge before the nation. The time has now come when we must implement our programme of prohibition. We must bring it in the Constitution. I am in full agreement with the spirit of the amendment, but it is misplaced. I must submit that the Constitution as it is, and I have repeated this many times before, is devoid of Gandhiji's ideas. It is very poor from that point of view. We have not accommodated him in the least. I had hoped that even if he be dead, we would keep his spirit alive, but he stands dead even in this Constitution. Without his spirit, I submit that the Constitution is dead. We had given our pledges to stand by his programme, and we had done so in the most unambiguous and unequivocal manner; Sir, on such questions we Congressmen cannot compromise, whatever may be the consequences. This prohibition has been in his programme. It has been also in our Election Manifesto, on which all members of the provincial Assemblies were elected, and it is through those elected bodies in the provinces that we have been sent to this Assembly, indirectly. So basically the whole of our electorate has voted for the programme of prohibition, and if now we do not bring it in here, we shall be betraying the wishes and the trust of the whole electorate, and the people on whose behalf we say, rightly or wrongly, that we are making this Constitution. Let us not forget that we are using the name of the people. If we do not appreciate their desires and do not accommodate them in this Constitution, we shall have no moral justification to use the name of the people. If we cannot accommodate even the idea of prohibition in our Constitution, then what else have we been sent here for? We have been talking of revolutions, and about all sorts of progress. But if we cannot have even this small reform in our Constitution; the book will not be even worth touching with a pair of tongs. I therefore submit that if the Draft Constitution does not contain prohibition, it does not contain Gandhiji, because where there is liquor, Gandhiji cannot be, and where Gandhiji is, liquor cannot be. That is the position. Therefore, I submit that this amendment may be accommodated at some proper place in the Constitution. I support the spirit of the amendment, but only oppose it because it is proposed to be put in a place which is not the proper one to incorporate it. With these words I oppose not the spirit, but the place where my friend wants his amendment to be inserted.

Kazi Syed Karimuddin: If Dr. Ambedkar accepts the spirit of my amendment and is prepared to accommodate it in article 31, I will have no objection in withdrawing it.

B. Pocker Sahib Bahadur: Sir, I heartily support this amendment and in doing so I do not want to take up the time of the House except to draw its attention to one fact. One of the previous speakers mentioned financial difficulties which will arise out of prohibition. I only want to draw the attention of the House to the fact that prohibition has been accepted by the Government of Madras, and by the Madras legislature, and they have worked it out wonderfully well. It is working wonderfully well inspite of financial difficulties, and these difficulties are being overcome. Therefore, I would say financial difficulties should not stand in our way. As was pointed out by the previous speaker, if we have got any real reverence for the views of Gandhiji, we ought to incorporate prohibition at least in the directive principles, if not in the mandatory provisions of the Fundamental Rights. It is not at all a difficult thing to include it in the chapter dealing with the directive principles.

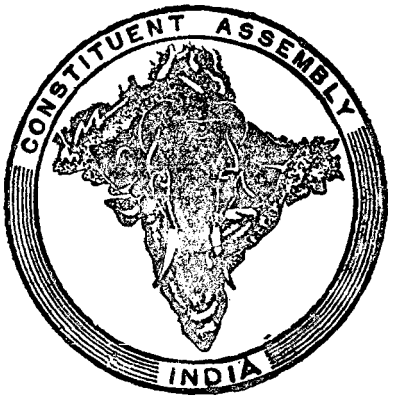
[B. Pocker Sahib Bahadur]

After all, it only says, Government shall strive to achieve what is stated there. Therefore I appeal to the House that the Members here should not allow it to be said of them that soon after Gandhiji's death, his wishes and views were also buried nine fathoms deep.

Mr. Vice-President: The House stands adjourned till Monday the 22nd November, 10 a.m.

The Assembly then adjourned till Ten of the Clock on Monday, the 22nd November, 1948.

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Volume VII
No. 10

Monday
22nd November
1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 22nd November 1948

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

DRAFT CONSTITUTION—*contd.*

Article 30-A (contd.)

Mr. Vice-President (Dr. H. C. Mookherjee): Before we commence the proceedings of today, I beg to apologise to the House for my delay which I may add is not due to any fault of my own.

We shall now resume discussion on new Article 30-A. Does any Member want to speak on amendment No. 872?

Shri Mahavir Tyagi (United Provinces: General): Sir, the other day I had spoken at length on this amendment, and I had put in a request with the Mover of this amendment to kindly agree to postpone the discussion on this question just now and have it when my amendment No. 999 comes. I hope, if the honourable Mover agrees, then it will be better that you be pleased to postpone discussion just now, and take it up when the proper occasion comes.

Mr. Aziz Ahmad Khan (United Provinces Muslim): Sir, this amendment was proposed by Mr. Karimuddin who is not present here today but at the same time the amendment was sent by me and him both, and he has specifically authorized me to submit that in case there is an agreement or an undertaking given by the Honourable the Law Member that he is prepared to incorporate the principle of it anywhere in the Constitution, then the amendment may be withdrawn; and I agree to it. Therefore, I am quite prepared to submit to your decision that consideration of the amendment may be delayed till we come to article 38.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I have not followed exactly what it is, but if it is a matter which relates to prohibition.....

Mr. Vice-President: Yes.

The Honourable Dr. B. R. Ambedkar: Then, it has been agreed between myself and Mr. Tyagi that he will move an amendment to Article 38, and I propose to accept his amendment. So, this matter may be postponed until we come to the consideration of Article 38.

Mr. Vice-President: Then we shall pass on to the next amendment No. 873.

Shri Basanta Kumar Das (West Bengal: General): Sir, I am not moving it.

Mr. Vice-President: The next amendment is No. 874.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I tabled this amendment because it appeared to me that the Draft Constitution contained no provisions to secure the most elementary justice or the barest chance of survival as decent and self-respecting citizens of the Indian Union, to the people of those territories in our country which are at present under the control and possession of feudal lords, the jagirdars. I want to invite the attention of this Assembly to the unfortunate circumstances—circumstances

[Shri Raj Bahadur.]

which provoke sympathy and pity at one and the same time—under which these people are living. But before I do that I should read my amendment. The amendment runs as follows:

"That after article 30, the following new article 30-A be added:

'30-A. The State shall not recognise feudalism in any shape or form and no person shall be entitled within the territory of India to any special rights or interests on the basis of property falling in the category of Jagirs or Muafis'."

Sometimes the position of these jagirdars and these feudal estates is confused with that of the zamindars and zamindaries. I submit that the two are essentially different in nature, conception and origin. In fact there is no resemblance or similarity between the two. The jagirdars find their origin in past history. They descend from certain ruling families in the States. In other words they are the scions of these families. They enjoy the right to hold properties in their jagirs and estates without paying anything absolutely, or if at all very little, to the State or Government to which they owe their origin. They enjoy independent judicial powers. They have got the right to levy even customs duty in some cases. In some other cases they have got the right to have a separate Police force. They also levy sales tax. Their succession always operates on the principle of primogeniture. As such, *vis-a-vis* the State to which they belong or *vis-a-vis* the Central Government, their position is one of quasi-sovereignty. I should therefore submit that there is nothing common between the zamindars and feudalists. *Vis-a-vis* their people, their rights and authority are almost unlimited. They have the right to levy extortionate rates of rents from the kisans (tenants) under them. It is common knowledge that they enforce begar, that is, forced labour, not only for ordinary purposes of agriculture but even for menial and humiliating jobs. Another thing that constitutes an insult to humanity itself is the imposition of a duty known as "Lagbag" on marriage or other occasions as also the way in which they impose certain humiliating social restrictions as for example in some cases these feudal lords do not allow their ryots and kisans to ride horses in their presence. If there is a marriage party, the bridegroom cannot ride a horse. The womenfolk of their ryots are not allowed to wear even silver trinkets or ornaments. In some cases, this goes to the extent of refusal of the right to hold an umbrella even. I therefore invite the attention of the House that if in a free India such conditions exist and are tolerated then this would mean clearly a denial of democracy and liberty. It is why when we address these people and tell them that "Swaraj has come", they look blankly at our faces. They refuse to believe that Swaraj has really come and we find ourselves in a very awkward position. It is true that now with the democratisation of the States, we have got popular Ministers functioning in the States, but in some of the States where these jagirs or feudal estates exist there are some sort of mixed Governments and Ministries, and our popular Ministers are unable to bring any succour or relief to this hard-pressed and oppressed section of the people.

If we consider the problem from another point of view, we can also see that in our Constitution, there are three classes of States or "units"—firstly, Governor's provinces, secondly, Chief Commissioners' provinces, thirdly, the acceding States. But it is obvious that these feudal estates enjoying a sort of quasi-sovereignty over their people, constitute a class by themselves. It should have been therefore meet and proper that there should have been something in the Constitution to provide for the securing of social justice, of liberty and democratic freedom to the people in these feudal estates. Unfortunately it is not there. The simple question that arises from the amendment I have tabled is whether this Constitution of ours should or should not contain something in order to ensure even an elementary freedom for these people. As far as the Draft

Constitution is concerned, we have been assured that the position of the States, in course of time or may be even before we finish the consideration of the Draft Constitution, shall be brought on a par and equality with the rest of the units of the Indian union. But at the present time there is definitely a difference in the Draft Constitution between the treatment proposed for the present States Unions or States on the one hand and the provinces on the other. This goes to the extent that the people of the States cannot come in the defence of their fundamental rights even, before the Supreme Court. If you want to appeal regarding certain matters there is a special procedure provided for it and that procedure would make it very difficult for us to get even our rights vindicated from the Supreme Court. When I commend this question to the House, I presume that the House will earnestly consider it. I am not very serious to move my amendment. What I am very serious about is that when I go back to my constituency I may face the people with an easy conscience. I want to know in case they ask me, "What have you done for us who are so much hard-pressed under the thumb of these feudal lords?" what answer I shall give to them. I want this answer from this Assembly. It is not my purpose to delay the proper consideration of the Draft Constitution by any frivolous or superfluous amendments, but I submit that the House should come to the relief and succour of these hard-pressed people and our Constitution should contain adequate provisions to secure this.

Mr. Vice-President: I have not been able to make out whether this amendment has been formally moved.

Shri Raj Bahadur: I have not formally moved it. I have simply had my say on it, to invoke the attention of the House on this question.

Shri H. V. Kamath (C. P. & Berar: General): Mr. Vice-President, Sir, it is very unfortunate that several amendments dealing with this subject have been scattered pell-mell in this list of amendments. It would have been much better if these amendments relating to village panchayats had been taken up all together and had been placed in the list also in the same order. Unfortunately, however, that has not been so, and I am constrained to move the amendment as it appears on the Order Paper, because by not moving it, I do not want the impression to be created that I have resiled from the stand which I took in the course of the debate on Dr. Ambedkar's motion for consideration of the Draft Constitution. I am very happy to see that my feeble voice was reinforced by the powerful support of my veteran and elder colleagues in this House and I am glad that several amendments on this subject have appeared. If you are so disposed, Sir, I would formally move it now and request you to hold it over for consideration till the other amendments come up for discussion or an agreed amendment comes up. Whatever the case may be and whichever amendment on this subject is accepted by the House, the other amendments will be withdrawn in favour of that, and mine also will be withdrawn later on; but as matters stand, I have no other go but to move it before the House. I do not want to traverse the ground which I covered in the course of my speech on Dr. Ambedkar's motion. I would only express the hope that where the type of capitalist, parliamentary democracy typified by Europe and America and the centralised socialism typified by the Soviet Union have failed to bring peace, happiness and prosperity to mankind, we in India might be able to set up a new political and economic pattern, and that we would be able to realise the vision of Mahatma Gandhi's Panchayat Raj and, through this system of decentralised socialism, we will lead mankind and the world to the goal of peace and happiness.

I, therefore, with your leave formally move this amendment and make a personal request to you to hold this over till such time as the other amendments to this Article are ready for discussion. I shall read my amendment.

[Shri H. V. Kamath]

"That after article 30, the following new article be inserted :

'30-A. The State shall endeavour to promote the healthy development of Gram Panchayats with a view to ultimately constituting them as basic units of administration.' "

Mr. Vice-President: Does Dr. Ambedkar wish to say anything on this amendment?

The Honourable Dr. B. R. Ambedkar: I move that this matter do stand over.

Mr. Vice-President: I find that there is an amendment, to add a new article 31-A, numbered 927 in the list, standing in the name of Shri K. Santhanam. This, as well as that amendment may be considered together. Is it the wish of the House that this may be done?

Honourable Members: Yes.

Article 31.

Mr. Vice-President: We shall then pass on to article 31.

An Honourable Member: Article 30 has not yet been put to the House.

Mr. Vice-President: It has been put and adopted.

Mr. Vice-President: The House will now take up article 31, for discussion.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I beg to move:

"That in clause (i) of article 31, the words 'men and women equally' be omitted."

The clause in question is to this effect, that "the citizens, men and women equally, have an adequate means of livelihood." I submit, Sir, that the words 'men and women equally' are unnecessary and redundant. In fact with the acceptance of this amendment, the clause would run thus: "that the citizens have the right to an adequate means of livelihood." I submit, Sir, that the word 'citizen' has been defined in article 5, clause (a). That definition is in general terms and I presume includes the feminine. The masculine, as it is well known, embraces the feminine. In the circumstances, as we have defined,.....

Pandit Lakshmi Kanta Maitra (West Bengal: General): Did the Honourable Member say, "masculine" means "feminine"?

Mr. Naziruddin Ahmad: 'Masculine' includes 'feminine' in interpretation. 'Every person' mentioned in article 5(a) means certainly feminine as well as masculine. Therefore, as the word 'citizen' has been precisely defined and that defined expression 'citizen' has been used in this article, I think the addition of the words "men and women equally" is unnecessary. If we are to make it clear that any law shall apply to men and women equally and if we are forced to declare it everywhere, then this expression has got to be used unnecessarily in many places. Although I agree with the principle that all citizens shall have certain rights without distinction of caste or creed, sex or colour, these words need not be there.

The Honourable Dr. B. R. Ambedkar: I oppose the amendment, Sir.

Shri Mahavir Tyagi: Sir, I have a suggestion to make. There are a number of amendments suggesting improvement in language or change in words. They do not propose any change of the spirit or the meaning of the article concerned. That being so, may I suggest that they may be collected together and sent to a committee which you may appoint to consider and dispose them of? If this is done much of the time of the House can be saved for the consideration of vital and important amendments.

Mr. Vice-President: I am quite willing to fall in with the suggestion, if that is the wish of the House. Probably we shall consider this suggestion later, after two or three days.

Shri Lokanath Misra (Orissa: General): Does it mean an adjournment of the consideration of these motions?

Mr. Vice-President: No. Why should we adjourn it? We can take a vote on it at once and come to a decision.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:—

"That in clause (i) of article 31, for the words 'that the citizens, men and women equally, have the right to an adequate' the words 'every citizen has the right to an adequate' be substituted."

Sir, in commending this motion to the House, I would like to be understood in the first place that this is not merely an attempt to improve upon language. I do not profess to be an authority on the English language, and much less on the mysteries of technical draftsmanship as is implied in this language. Mine is only a commonsense view of this matter. The term "the citizens", as it is used in this clause, is so collective that I am afraid its distributive sense is apt to be lost sight of. I am, therefore, proposing to substitute for the words "the citizens" the words "every citizen" so that each and every member of the society shall have this right to an adequate standard of living. The distributive sense is brought out much better by my amendment, this very language is used in another article in this Chapter itself later on when they are speaking of the right to primary education. I am therefore suggesting no innovation which is not authorised by the draftsman's own terminology.

It is, of course, beyond me to say why in one article, in one and the same Chapter, they use the collective expression "the citizens", while in another article in the same Chapter they use the words "every citizen" and in a third again some different form. This, Sir, is the reason why, not understanding the distinction that may have been in the mind of the draftsman for using a variety of expressions to convey perhaps the same meaning, at least to a commonsense man, I am proposing this amendment. If the intention is that the words "the citizens" are used in the collective sense, then I submit that would be an offence more of substance than I am at present inclined to believe while reading this article. For taking the term collectively it can at best express a vague hope for the happiness of the average citizen. Now, the law of averages is a very misleading law, and will give you a sort of satisfaction for which in truth there can be no basis. I have no desire to convert this debate into any kind of light-hearted exhibition of one's capacity to entertain the House; but I cannot help bringing here to the notice of the House the mischief that the vagaries of the mere mechanical statistician can reduce the law of averages, and give a result which is totally opposed to fact. In illustration, may I say that I have heard the story of a women's hostel having to be reported upon, when the trustees of the hostel came to know that there were ten girls, and one of them had apparently misconducted herself. There was some trouble and a statistical authority was called in to investigate and report on this hostel. He examined the inmates and made the famous report saying that everyone of the inmates of the hostel was ninety per cent virgin and ten percent pregnant. In this statement he was simply applying the law of the average.

I do not know whether it is fully appreciated that this kind of perpetration is within the power of the expert to achieve; and as I do not wish the Constitution to lead to this kind of expert technical perfection, I wish to substitute the words "every citizen" for the words "the citizens", which will leave no room for doubt in the matter.

[Prof. K. T. Shah.]

Another reason why I am moving this amendment for dropping the words "men and women equally" is that it smacks too much in my opinion, of patronising by men over women. There is no reason for man to believe that he is even an equal to woman, let alone superior. According to that view which I have always entertained that man is a somewhat lower animal as compared to woman, I feel that this exhibition of patronage by man over woman, as if we were conferring any special right, ought to be expunged from the Constitution.

Citizens are citizens irrespective of sex, age or creed; and that being one of the fundamental propositions accepted by the Constitution, I see no reason why we should say "men and women, equally" as if we were pleased to grant equal rights to men and women, rights moreover which are only directives, and therefore not necessarily to be implemented immediately. For these reasons, I suggest that this amendment ought to be taken, not merely as a verbal amendment, but one of substance, and I trust that those responsible for moving this Constitution before the House will accept it.

Mr. Vice-President: I understand that even though amendment No. 884 is to be negatived, I must give an opportunity to Mr. Naziruddin Ahmad to speak on it.

Mr. Naziruddin Ahmad: Not moving it, Sir.

Mr. Vice-President: Then 885, Professor K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That for clause (ii) of article 31, the following be substituted:

'(ii) that the ownership, control and management of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters as well as in the shape of the seas along the coast of the country shall be vested in and belong to the country collectively and shall be exploited and developed on behalf of the community by the State as represented by the Central or Provincial Governments or local governing authority or statutory corporation as may be provided for in each case by Act of Parliament';"

Sir, the original clause for which I propose this one in substitution stands as follows:—

"(ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;"

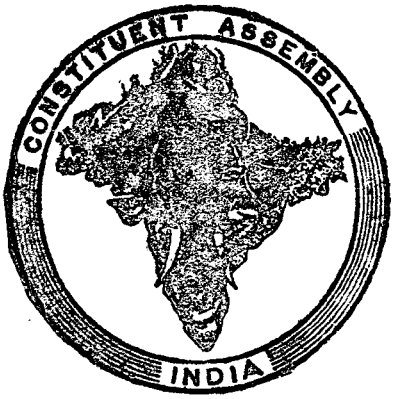
If I may venture to say so, Sir, the clause, as it stands can lend itself to any interpretation; and, with the background on which we have been working, with the traditions under which the administrative machinery is operating, and the allegiance which vested interests command in this House, I am afraid that, if this clause is allowed to stand as it is, instead of serving any purpose, it will make the proper development of the country or the just redistribution of its wealth, or bringing in a fair measure of social justice, only an empty dream.

I suggest, therefore, that it should be substituted by what I have just read out, whereby the ownership, control and management of the natural resources shall be vested in the community collectively, and shall be exploited, developed and worked by the community as represented by the Central or Provincial or Local Governments, or by any statutory corporations that may have been created for the purpose.

I think there can be no dispute on this proposition that, as regards the natural resources that I have tried to describe, no human being has lent any value to those resources by his or her own labour.

They are gifts of nature. They are the initial endowment which each country has in greater or less measure; and, in mere equity, they should belong to all people collectively. And if they are to be developed, they should be developed also by, for, and on behalf of the community collectively.

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The creation or even the presence of vested interests, of private monopolists, of those who seek only a profit for themselves, however useful, important, or necessary the production of such natural resources may be for the welfare of the community, is an offence in my opinion against the community, against the long-range interests of the country as a whole, against the unborn generations, that those of us who are steeped to the hilt, as it were, in ideals of private property and the profit motive, do not seem to realise to the fullest.

In the resources that are mentioned in my amendment not only is there no creation of any value or utility by anybody's proprietary right being there, but what is more, the real value comes always by the common effort of society, by the social circumstances that go to make any particular interests or resources of this kind valuable.

Take mines and mineral wealth. Mines and mineral wealth, as everybody knows, are an exhaustible,—a wasting asset. Unfortunately, these, instead of having been guarded and properly protected and kept for the community to be utilised in a very economical and thrifty manner, have been made over to individual profit-seeking concession-holders and private monopolists, so that we have no control over their exploitation, really speaking, for they are used in a manner almost criminal, so that they can obtain the utmost profit on them for themselves, regardless of what would happen if and when the mines should come to an end or the stored up wealth of ages past is exhaused.

I suggest, therefore, that we allow no long range interests of private profit-seekers involved in the utilisation of these mines and the mineral wealth, that on the proper utilisation of these mines and mineral wealth depends not only our industrial position, depend not only all our ambitions, hopes and dreams of industrialising this country, but what is much more, depends also the defence and security of the nation. It would, therefore, I repeat, be a crime against the community and its unborn generations if you do not realise, even at this hour, that the mineral wealth of the country cannot be left untouched in private hands, to be used, manipulated, exploited, exhausted as they like for their own profit.

It is high time, therefore, that in this Constitution we lay down very categorically that the ultimate ownership, the direct management, conduct and development of these resources can only be in the hands of the State or the agents of the State, the representatives of the State, or the creatures of the State, like Provinces, municipalities, or statutory corporations.

Another argument may also be advanced here in support of my view. By their very nature, these resources cannot be exploited economically or efficiently unless they become monopolies. In one form or another, they have to be developed in a monopolistic manner. Now monopolies are always distrusted so long as they remain in private hands and are operated for private profit. If they are to be monopolized, as I believe inevitably they will have to be, then it is just as well that they should be owned, managed and worked by the State.

It is not enough to provide only for a sort of vague State control over them as the original clause does; it is not enough merely to say that they could be so utilised as to "subserve the common good," every word of which is vague, undefined and undefinable, and capable of being twisted to such a sense in any court of law, before any tribunal by clever, competent lawyers, as to be wholly divorced from the intention of the draftsman, assuming that the draftsman had some such intention as I am trying to present before the House. We must have more positive guarantee of their proper, social and wholly beneficial utilisation; and that can only be achieved if their ownership, control and management are vested in public hands.

[Prof. K. T. Shah]

Considerations, therefore, of immediate wealth, of the necessity of industrialisation, of national defence, and of social justice have moved me to invite this House to consider my amendment favourably, namely, that without a proper full-fledged ownership, absolute control and direct management by the State or its representatives of these resources, we will not be able to realise all our dreams in a fair, efficient, economical manner which I wish to attain by this means.

Most of these forms of wealth, I need hardly tell this House, are yet undeveloped, or developed in a very, very superficial manner. It is to be hoped that in years to come, we shall undertake and carry out a much more direct, a much more effective and efficient Plan for the all round development of the country, in every part and in every item of our available resources. If that is so, if we are going to achieve, if we are going to take that as our first concern, for the new life that is pulsating throughout the country, then I put it to you, Sir, that without some such provision, it would not be possible to attain the objective as quickly and as economically as we would desire.

I would only add one word. Deliberately, I have not included in the list of initial resources of the country, the biggest of them, namely land. I have not mentioned it, not because I do not believe that land should be owned, operated and held, collectively, but because I recognize that the various measures that have been in recent years adopted to exclude landed proprietors—zamindars to oust them and take over the land, would automatically involve the proposition that the agricultural or culturable land of this country belongs to the country collectively, and must be used and developed for its benefit.

For these reasons, therefore, Sir, while particularising the natural resources which we should have in common ownership and develop collectively, I have deliberately left out perhaps the most important of them all. But that I trust will not prejudice the fate of this proposition by itself. I commend it to the House.

(Amendments Nos. 886 to 891 were not moved.)

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That for clause (iii) of article 31, the following be substituted :—

'(iii) that there shall be no private monopolies in any form of production of material wealth, social service, or public utilities nor shall there be any concentration of means of production and distribution in private hands and the State shall adopt every means to prevent such concentration or accumulation'."

Sir, the original Article as it is drafted reads as follows:

"(iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;"

Once again, I have to use the same argument namely that while I have taken the phraseology that is given in my amendment almost entirely from the Draft itself, I have tried to make it much more clear and unambiguous than the Draft makes it. I feel, Sir, that if the Draft remains as it is, it is liable to be interpreted in a way not at all intended perhaps by the draftsmen, or, at any rate, not understood in that sense by the reader.

I think, Sir, that monopolies by themselves are very offensive to the common good. In every country whose history is recorded, wherever they have manifested themselves, there have been cries of protest against their presence. Some of the most important decisions which have contributed materially to the growth of the English Constitution have been in regard to monopolies granted by the Crown. No fight was so strong in the ages gone by in England or France or other countries which have experienced this in a more intense form than the fight against the monopolies.

Monopolies, however, need not be created or established by direct grant or patent, or in a legal, open form that would admit itself to be caught or controlled, so to say, by the straightforward operation of any provision like this included in the Constitution or legal system in general.

Monopolies develop much more artificially; monopolies develop much more by force of the very circumstances that competition is supposed to provide. In a competitive society, we are told, the only guarantee of the common good being served is that, by the mere process of competition amongst themselves, the competing producers will have so to reduce prices, they would have so to bring down their costs or selling price, that the largest amount of profit can be gained if the monopolised commodity is consumed by the widest number of consumers. In actual fact, however, Sir, in every country that has got industrialised, and commercialised on a wide scale, you find that the competitors soon come to realise that competition is good for nobody. Hence by arrangement amongst themselves, by all sorts of devices, like Trusts, Syndicates, and Cartels, they try to make a virtual monopoly, which may seem inoffensive on the face of it, which may even appear to be aimed at cutting out costs and reducing overheads, and thereby making the product more easily and more cheaply accessible; but which, in fact, really result in adding enormously to the increasing profit of the private proprietor.

I take it, Sir, that members of this enlightened House will be all too familiar with the history of Trusts in England or America, and of the Syndicates and Cartels in Germany or France, for me to outline it. They would easily realise how insidiously, how slowly, but how irresistibly the movement for Trustification, Syndication, Cartelisation, combination or monopoly in all important industries began to develop, what devices they adopt for holding these monopolies tightly and closely among a selected few of their own blood circle, and what part the Interlocking Directorate plays in the general direction of policy; how when competition is intense, they try to ruin every new appearance in the field, so that the field remains for ever their exclusive possession, their exclusive property.

We in this country have too bitter, too recent, too varied and too numerous experiences of the operation of foreign monopolists, who, until the other day, held power in our country, whereby any indigenous enterprise that was against the vested interests of the alien Monopolists, had to put up the most intense struggle against the monopolist outsiders. Only the other day we had the spectacle, in which the history of the growth of a great national shipping concern was outlined. Those who know the the vicissitudes through which that concern has gone, would realise the long years of fight, the discouraging developments that they had to put up with, because the Government of the country in those days was a foreign Government. Because the new competing interest was an Indian interest, it did not suit the Government to allow the foreign monopolists in any way to suffer and the native new enterprise to succeed. The latter, therefore had to suffer all kinds of handicaps and disadvantages, into the details of which this is not the place nor the time to go. The fact, however, that in spite of that, by the support of the people, by the intrinsic strength of the service they wanted to render, the enterprise has survived to this day, does not undo the principal argument that I am trying to place before the House, that private Monopolies, by their very nature, are not in the interests of the public, unless they are of the community as a whole.

A private less correct monopolist will always be a predatory creature, who will hunt and prey upon those who become consumers of his product or service. Whether it is in an ordinary industry like the manufacturing industry

[Prof. K. T. Shah]

turning out a given product, or in any industry which is making consumer goods, or in a social service, like Education or Health, there is danger of monopolists creating strong private interest which it will never be in the interests of the country to tolerate. I should therefore forbid the very possibility of any monopoly emerging, let us say, in the matter of education or educational apparatus, let us say, in regard to health or the production of drugs, or making medicines, or the supply of surgical and other instruments and apparatuses. I would beg to submit to this House that there is every danger of our country being dominated by private monopolists unless, from the very start, in this very Constitution we make it perfectly clear that in this New India, there shall be no room for private monopolists, who would be predatory, who would be preying upon their kind as cannibals in a form that no savage or alleged savage of the Pacific Seas would do.

The civilised cannibal of our time, the blood-sucker, is the exploiter who is highly honoured, who is often titled, who is very fully represented in this House also, and is therefore able to dictate to you, and inspire you in innumerable ways, as to how you shall provide for his safety in the Constitution itself, so that he could get a new lease of life and go on in a variety of ways, multiplying, diversifying, increasing and intensifying his monopoly to the prejudice of the common people, to the prejudice of the country's defence, to the prejudice of all those who have been looking forward to this age as an age in which real power is supposed to be vested in the representatives of the people in this House, to be able at least to obtain the immediate necessaries of life without paying the toll of the profiteer, and as such to be able to lead a life a little above the level of the beasts.

The Honourable Shri K. Santhanam: (Madras: General): Does the expression 'Private Monopolies' include monopolies by public companies?

Prof. K. T. Shah: I have already said in an earlier amendment that I would not only have monopolies but only-monopolies when they are public, either Government owned, State-owned or owned by state Corporations. If by public companies you mean statutory companies, the answer is in the affirmative. But if you mean by public companies only those that are registered and falling under the Companies Act as public companies, then the answer is in the negative.

The Honourable Shri K. Santhanam: The expression 'private monopolies' will exclude public limited companies.

Prof. K. T. Shah: I would invite my Honourable friend to help me in making it much more explicit. If he will not, then he will forgive me for not paying more attention to these very casuistic words. The monopolies I have in mind are represented much more by Trusts, by inter-locking Directorates, by a variety of ways by which banks, insurance companies, transport concerns electricity concerns, power corporations, utility corporations of all kinds etc. yet all combined horizontally, vertically, angularly, sideways, backways and frontways, so that if you take up the totality of them all, you will find that this country is in the grip of between 300 to 500 people or families so far as economic life of this country is concerned. They may have their nephews and their nieces functioning in various capacities. One may work in a factory, another may shine in sports, a third may flirt with Art, and a fourth may endow Science and Learning. One may be a Manager, and another may be a philanthrophist, and yet another may be a religious teacher, but that does not change the complexion. There are a few hundred families in this country which hold us all in economic slavery of a kind that the

slavery in the Southern States of America has no comparison. If you do not open your eyes even now, then you are inviting with open eyes the kind of revolution in a form which none of us might desire but none of us would be able to resist. Sir, I commend this proposal to this House.

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

"That in clause (iii) of article 31, for the word 'concentration' the words 'undue concentration' be substituted."

Sir, the passage in the Draft Constitution runs thus :—

"That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment etc".

My amendment would be to the effect that the clause should prevent "undue" concentration of wealth and means of production to the common detriment. I submit that the economic system which we have here today and which it seems is in view, would necessarily mean that the wealth and means of production would be uneconomic; unless we want to introduce a Communistic state, these inequities would be inevitable. Even in the Communistic state of today there are inequities. I submit, Sir, that it is impossible to equalise wealth and means of production in the hands of all. I submit, the earning of a good business man, that of a lawyer of eminence, that of a Minister of eminence and that of a common man in the street or a Chaprasi, cannot be equal. So I submit that all that we should attempt to prevent is "undue" concentration of wealth and means of production. There would be inevitable concentration of some wealth and the means of production. I submit Sir, that this word would remove the misconception.

(Amendments Nos. 896 to 903 were not moved.)

Mr. Naziruddin Ahmad : Sir, Amendment No. 904 consists of three parts, of which I wish to move only parts two and three.

Sir I beg to move that in clause (v) of article 31, for the word "abused" the word "exploited", and for the words "economic necessity" the word "want" be substituted.

Mr. Vice-President: Is it necessary to make a speech?

Mr. Naziruddin Ahmad : No, Sir.

Mr. Vice-President : Amendment No. 905, Mr. Kamath.

Shri H. V. Kamath : Mr. Vice-President, Sir, I find that so far as this amendment of mine is concerned, I am in very good company. I find that the Drafting Committee has sponsored an amendment—No. 907—to the same effect.

The clause as it stands, reads as follows :

"The State shall.....direct its policy towards securing.....that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."

My amendment seeks to add the word "sex" also, so that it will then read thus :

".....are not forced by economic necessity to enter avocations unsuited to their age, sex or strength."

I feel, Sir, that so long as the economic system is what it is today, it is conceivable that women might be forced by sheer necessity to take to occupations which may not be suitable to the conditions imposed on them by nature. I personally feel that this would be a wise amendment, a wise move, to see that necessity does not force women to enter certain occupations.

[Shri H. V. Kamath]

Since sending in this amendment, however, I have ascertained from my Honourable women friends in this House that they are not very keen on this provision being made, in this clause. So in spite of my inclination to the contrary, in spite of my disposition to retain this amendment, I have decided, out of deference to their wishes, not to press this amendment, and not to move it. Of course, it will await the fate of amendment No. 907 which has been officially sponsored.

Shri C. Subramaniam (Madras: General): Sir, can a speech be made if the Member is not moving his amendment ?

Mr. Vice-President: I did not notice till the very end that Mr. Kamath was not going to move his amendment. We are all in the hands of Mr. Kamath in this matter. I am not a prophet.

Then we come to amendment No. 906, Shri Sahu.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. Vice-President, move the amendment which stands in my name :

"That in clause (v) of article 31, for the words 'their age' the words 'their age, sex' be substituted."

Mr. Kamath admitted here that even he considers that the word 'Sex' should be put in but that he did not do so because the term 'Sex' was not liked by some lady members of this House. But I insist that this word should be retained here. I would like to know the reasons which led them to say that they did not like this word. We see that the word 'Sex' has already been used in article 9 of the Fundamental Rights. We also know that we use the word 'Linga' in our language, and so I fail to see the harm likely to be done by the use of this word here.

Secondly, if we do not use the word 'Sex' here, many unpleasant complications are likely to ensue. In order to avoid all such complications I would like that the words "Unsuited to their age, sex and strength" should be retained. There are many such factories and mines which are not fit for women to work in. But many women are compelled by circumstances to work there. To stop this practice the word "Sex" should be specifically used here.

The third point is that the members of the Drafting Committee like to use the word 'sex' here. When it is so, I do not find any reason to delete it. And hence the word sex must be retained so that women may be saved from exploitation. The condition of the women of our country is rather deplorable and I do not like that they should work day and night in the mines and be obliged to adopt some such profession which may spoil their home life. On account of these three reasons I propose that this word 'Sex' must be retained here and I move this amendment accordingly.]

Mr. Vice-President: No. 907, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar: Not moving.

Mr. Vice-President : Then No. 908. Mr. Syed Abdur Rouf.

Syed Abdur Rouf (Assam : Muslim) : Sir, I beg to move :

"That in clause (v) of article 31, for the words 'to their age or strength' the words 'to their sex, age or health' be substituted."

From the trend of the amendments it is seen that so far as acceptance of the word "sex" is concerned, there is unanimity of opinion in the House. Now, in my amendment I have tried further to add the word "health" in place of "strength", because I think the word "health" includes and connotes the

* [ ] Translation of Hindustani speech.

word "strength", but the word "strength" does not necessarily connote the word "health". On this ground the word "strength" is unsuited. If we want to save the worker from ruin, we should consider the health of the worker, not merely his strength. I therefore commend this amendment for the acceptance of the House.

Shri S. V. Krishnamoorthy Rao (Mysore): Sir, I move:

"That in clause (v) of article 31, for the words 'that the strength and health' the words 'that the health and strength' be substituted."

My amendment is only in order to rearrange the phraseology. My only justification is that strength follows health and the phraseology sounds better. Sir, I move.

(Amendments Nos. 910 to 913 were not moved.)

Rev. Jerome D'Souza (Madras : General) : Mr. Vice-President, I am grateful to you for the opportunity you have given me of making a very brief statement on this amendment which I and some of my friends have tabled. Let me say at once, to reassure this House that that statement will be brief and that for reasons which I shall presently explain, it is not my intention to press the amendment. But, Sir, I deem it a matter of some importance that the grounds which moved us to table this amendment should be understood by this House, and that the broad principles on which we have based this request may be appreciated, so that though at the present moment and in the present form this amendment may not be acceptable or may not be prudently pressed, the spirit of it may be understood and somehow embodied in this momentous and solemn document of our Constitution.

Sir, there have been complaints from many sides of this House that our Constitution does not reflect the spirit or the genius of our people, that it is a kind of mixed recipe got up from various foreign sources and foreign constitutions. To a certain extent this was inevitable, but I am sure that the framers of the Draft have partly answered this criticism by the embodiment of certain principles in this part of the Constitution, the Directive Principles.

Now, Sir, if one thing characterises our people more than anything else, it is the power and the sanctity of the family tie, the sacredness which we have been accustomed to attach to the sanctities that go to make up the spirit and the atmosphere of home life. Therefore, I am sure that every section of this House will feel that it is in the fitness of things that this strong and traditional spirit of our nation and race might somehow be expressed in our Constitution. Sir, I venture to say that if the virtues, the strength and manhood of our people have survived so many centuries of invasion and subjection, it is because, inspite of external and political changes, the strength of the family, its protective power, its capacity to inspire and maintain virtue and moral strength, have never been diminished, have never been completely overcome in our land. Whatever is best in the Caste system—and nobody will say that it is an unmixed evil—I venture to say is an extension of the family spirit, and the attachment to family ties that has come out of it is its best and most admirable characteristic.

Sir, in a Constitution, we undertake legislation for the organisation of society. We are speaking of villages, of provinces and the Centre, of tribes and Communities, and every other form of society. Now, the primary unit of society, one whose limits and characteristics are fixed by nature itself, is the family. The varieties and forms of external civil society may vary and change, but the limits, the characteristics, the fundamental features of the family, are fixed by nature. And it is within the bosom of the family that the social virtues, on the basis of which we are making this Constitution, and the firmness of which will be responsible for the carrying out of the Constitu-

[Rev. Jerome D'Souza]

tion, those fundamental virtues are developed and most lastingly founded in the family circle—mutual regard, mutual dependence, respect for authority and order, foresight and planning, and even the capacity for negotiating with other units,—qualities which would be required on a wider scale and in a wider theatre in our political and public life. Nay, Sir, patriotism itself is but the extension and the amplification of the love of the family. We call our country Fatherland or Motherland. Even before we know the culture and the extent and the greatness of our historical past, we begin to love our country because we love the little place where we were born, because the scenes and the sounds and the sights of those places are linked for ever in our memories with the voices and visages which are among the most lasting and most treasured things in life. Therefore, I feel that this house will not reject this plea that in some form our respect and love for family traditions, may be reflected in this Constitution.

Now, Sir, I know that there is a serious divergence of views as to what this amendment should imply, in what manner the family should be protected and how its stability should be ensured. Let me, Sir, in all frankness place before you very briefly what was in my mind about the means of ensuring the stability of the family. In the first place, I believe it implies that in the majority of instances, in a normal state of society, the mother of the family should have freedom and leisure to give all her attention to the upbringing of her children and to the maintenance of that family. Now, I do not say that it is obligatory on her to do so always—there are exceptions, and she may sometimes find it convenient to give her best energies to answer the higher vocation of public life and public service. But under normal conditions this is her main and her sacred duty, and this implies that the wage-earner, be he the working man, be he the poorest in the country, should have a wage which will enable him to maintain his wife and children, a *family wage*, a concept which modern social legislation tends to accept more and more. I say, therefore, that the head of the family is not to get a wage in accordance with the strict principle of remuneration for labour done according to the laws of liberal economics. I rather say that society owes him, as the head of a family and as one of the most important elements in the organisation of society, a maintenance to which he has a right, partly independently of whatever work he does. That is one principle which this amendment implies.

In the second place, I believe that this amendment, or this idea of the sacredness of the family, implies a readiness on the part of the State to recognise and encourage the institution of marriage in every way possible in its stable and monogamous form. I wish to draw the attention of the House to this fact that in all societies the tendency is to recognise more and more monogamous marriages as the only legal form of marriage. Moreover, I am aware of, and I am not here prepared to discuss, the claims of the women of our land to some degree of facility in breaking up unions which are no longer happy. I admit there may be grounds for separation when a union has become utterly unhappy. I plead at least for this: that the State should look with caution and prudence, nay with positive disfavour, on the multiplication of the facilities for divorce in order that the permanence and happiness of the family may be ensured.

In the third place,—and I know that here again I shall provoke the opposition of many elements, but nevertheless, it is necessary to state it on this occasion and in this House—it would be unfortunate if the State gave official patronage or approbation or encouragement to the artificial limitation of families. We in India who are recipients of such bounty from nature have nothing to fear from the multiplication of the greatest source of our wealth,

namely, the manhood of our land, the hard-working men and women of our race.

Lastly, I would, as a last idea which should accompany this notion of the sanctity and permanence and stability of the family, plead for respect for the rights of parents, the recognition of all reasonable authority on the part of parents in regard to their children, particularly, the right of the parent to see that his child is brought up in the traditions and in the beliefs, which are dear to him, so that there may not be in his family a disruption of the happy atmosphere, the uniformity, the homogeneity which should normally reign there. These are the implications—grave, far reaching, but I believe, acceptable to the vast majority of our countrymen—these are the implications of this amendment. But as I said already, it is because I understand that in this particular form and owing to the vagueness of its implications there may be very serious difference of opinion, I am prepared not to press it at the present moment, but I do want this House and my most honoured and most respected colleagues somehow and at some time and in some form to speak the word which would ensure for future generations the blessings which they and we ourselves have inherited and enjoyed, to recognise that the great virtues which go to make up the greatness of a country—personal worth—are best developed in an early period and within the atmosphere of the home. We are optimists and democrats, but we know that human nature has many evil inclinations and if they are not to get the better of a man, if the vicious and anti-social elements in his nature are not to gain the upper hand, it is during these tender years that the seeds of lasting civic virtues should be planted. I therefore ask you, my honoured colleagues, to turn your attention, to turn your regard, back to that treasury of the tenderest and the most sacred memories that you have, the voices and the visages that are most dear to you, and appreciating all you have received from that circle and from those people, do something to ensure that the future children of this land will be blessed with the same happiness.

Shri V. C. Kesava Rao (Madras : General) : I do not move amendment No. 917 standing in my name but I reserve the right of moving it later in connection with fundamental rights.

Pandit Thakur Dass Bhargava (East Punjab : General) : I am not moving amendment No. 920 at present, but when we come to fundamental rights, I propose to move it.

I am not moving No. 923. The same remarks apply as in 920.

Mr. Vice-President: The article is now open for general discussion.

Prof. Shibban Lal Saksena (United Provinces: General): This is a clause which is very fundamental in our Constitution. The character of the amendments suggested also shows that it goes to the very root of the whole Constitution. My sympathies are undoubtedly with the amendments of Prof. K. T. Shah who has moved two amendments which really suggest that in this clause we should lay down that the system of our State shall be "Socialist". In an amendment to the Preamble I have suggested that the word "Socialist", should be added before the word "Union". I personally feel that the particular amendments which he has moved are very important and I would urge on my friend Dr. Ambedkar at least to incorporate the spirit of those amendments somewhere in the Constitution. Part (2) of article 31 says:

"...Ownership and control of the material resources of the community are so distributed as best to subserve the common good."

Now, this enunciation "ownership and control of the material resources of the community to be distributed so as to subserve the common good" is a

[Prof. Shibban Lal Saksena]

very wide enunciation of a most important principle. The enunciation is so general that any system of economy can be based upon it. Upon it can be based a system of socialist economy where all the resources of the country belong to the State and are to be used for the well being of the community as a whole. But a majority in the next Parliament can also come forward and say that the New Deal evolved by Roosevelt is the best system, and it should be adopted. This clause leaves it open to any future parliament to evolve the best plan of their choice. But I feel personally that we should today at least lay down that the key industries of the country shall be owned by the State. This has been an important programme of the Congress since 1921. The Congress has accepted the principle that the key industries shall be controlled by the State. Even recently in the committee appointed by the Congress the report mentioned that the key industries shall be owned by the State; for the present we have postponed nationalisation of key industries for ten years. But I do feel that in our Constitution we must lay down that this is our fundamental policy. Unless we lay down in the Constitution itself that the key industries shall be nationalised and shall be primarily used to serve the needs of the nation, we shall be guilty of a great betrayal. Even if the principle is not to be enforced today, we must lay down in this clause (ii) about directive principles that the key industries shall be owned by the State. That is, according to the Congress, the best method of distributing the material resources of the country. I therefore think that Professor Shah's amendment has merely drawn attention to this fundamental principle.

His second amendment is against monopolies and my sympathies are entirely with him. The system of monopolies has been admitted to be very wrong everywhere. In America, about 54 per cent of the nation's wealth is owned by some 60 families of that State and it is said that the 12 directors of these industrial concerns there are more powerful than even the Cabinet Ministers of the U. S. A. I therefore think that we must take a lesson from the other countries and lay down in our Constitution that monopolies will not be permitted in India. This being so I trust that Dr. Ambedkar will try to incorporate this idea in the clause by means of an appropriate amendment.

I know there is one merit in his draft which is that he has left the whole thing open and it is my hope that he will incorporate this idea in the clause. This Assembly, which has the majority from one party that has already committed itself to these principles, should lay down these principles in the Constitution itself. As I said, Dr. Ambedkar has left the whole thing open and it is possible that an Assembly elected on the basis of adult franchise will lay it down that the State shall own and control the key industries.

I have given notice of an amendment to an amendment of Mr. Kamath (875-A) which he did not move. My object there was to substitute for the words "The State shall foster the growth" the words," the State shall promote the development". The amended amendment would have read: "The State shall promote the development of economic and social democracy and to that end direct its policy towards securing." I had proposed that this amendment should be incorporated in the first line of article 31 in accordance with the view announced by Dr. Ambedkar the other day that we want an economic democracy on the basis of 'one man one value'. It is a great ideal and I congratulate him for giving expression to that great ideal. With these words I commend this article to the House and I hope that the spirit of my criticism will be remembered by Dr. Ambedkar.

Shri Jadubans Sahaya (Bihar: General): With your kind permission, Sir I hope the House will give me the indulgence of making certain observations in regard to article 31 which is now before the House for its consideration.

Sir, it was said, possibly yesterday, that this article of this Chapter is the Charter of economic democracy. It was also said that in this Charter and in this article we could find the germs of socialism and other isms. It was said also that this article was the Charter of the poor man. I most respectfully submit that in this Chapter, Article 31 is the pivot around which everything will revolve. Article 31 clause (ii) is the most important feature to which I shall most respectfully draw the attention of the House. But it is not possible for me, I am sorry, to support the amendment moved by my friend Professor Shah outright, because I respectfully submit it is loosely worded. But I may state for the information of the House that, so far as the principles which underlie his amendment are concerned, I support them. The spirit of it also I support. I fail to see why this august Assembly which meets only once in every country, is not keen to the extent of clearly and boldly incorporating in this article that the means of production and the natural or material resources of the country shall belong to the community and through it to the State. I cannot understand this, though the large majority of the amendments, if you scrutinise them, will be found to favour the principles underlying the amendment of Professor Shah. I cannot understand how it is that the Congress, the predominantly majority party here, is not pressing this thing.

One Honourable Member stated yesterday that these are political matters and that political parties should not bring up such amendments. I was considerably surprised to hear it. Constitution making is the work of political parties. So far as the organisation to which I have the honour to belong, viz., the Congress we congressmen have given promises from many platforms to the teeming millions that so far as the means of production and the natural resources of the State are concerned, they will not be put into the hands of a favoured few. How can we go back on our word? After all this is a directive principle. I am not asking you to incorporate it so that the capitalists and the big purses of the country may not have the opportunity to work the mines and the minerals. This is only a directive principle. Are we not going to keep it as our goal that all means of productions and the gifts of Nature which belong to this vast country should belong to the State or to the community? I am sorry, Sir, that the bogey has been raised by the capitalists that if you talk like this they will cease to produce. I know the large majority of friends here will not be deterred by this bogey raised by the capitalists, because production is not for the welfare of the community. It is for the welfare of the capitalists. They produce for profits. Honourable Members of this House know it better than myself that they produce for profit and they will continue to produce as long as they make profit and, if not, they will not. So we should not be deterred by this slogan. As far as the Government of India is concerned,—somebody attributed it to the Prime Minister—it is said that after ten years we shall have nationalisation. To this, Sir, Ardeshir Dalal has stated, according to newspaper reports, that production is hampered because something was said by the Prime Minister of India.

Sir, in this Chapter and particularly in this article are we not going to suggest that ultimately we have to nationalise them, are we not going to suggest that is the aim of the nation, is the target of the nation? We stated in the August Resolution that land belongs to the tillers of the soil. You have here magnificent and sparkling words, social justice, political justice and economic justice. Very good and splendid words but they appear very far away from the toiling millions. Why not state here, not today, not tomorrow but in the distant future that the community will own what belongs to the community by the gift of nature and by the gift of God. I do not belong to the Socialist Party but I belong to the Congress to which many here belong. May I appeal to Dr. Ambedkar who claims to represent the down-trodden untouchables of

[Shri Jadubana Sahaya]

the country not to wash away this hope from our hearts that in the future years the natural resources of the community may belong not to the privileged few but to the poor people of the country, for the good and benefit of all.

Shri S. Nagappa (Madras: General): Sir, this clause is the only clause where the poor man, the common man can find some hope for the future. Clauses (ii) and (iii) are intended for the benefit of the poor man. No doubt, it would have been better if this clause had been drafted in more unequivocal terms instead of in this ambiguous language. As a layman, as a common man, I can see some ray of hope for the future in these clauses. It is the aim of all honourable Members who have assembled here to socialise as early as possible. As long as these clauses stand, there is no possibility of capitalism thriving in India. I am very much thankful to the Drafting Committee and to the President of it in particular for having brought in these clauses and my only grievance is that they have not been drafted in more unequivocal language. Sir, the slogans today are municipalise utilities and nationalise industries and means of production, and unless and until these things are done, there is no hope for the common man. Today, land is concentrated in a few hands and the tiller finds himself in serious difficulties. A friend was moving an amendment for abolishing feudalism in India. When such are his feelings, you can imagine what would be the feelings of a man who has been teased for centuries and centuries. You know the conditions of the tenants in jagirs and zamindaries. They are expected to work for nothing for a number of hours and for a number of days, whereas in factories there are fixed hours. I am very glad, Sir, that in the Fundamental Rights there is a provision against begar and forced labour. I would request the framers of the Constitution to see that every word of it is translated into action. There is no use having pious wishes or putting in high-sounding words.

With these words, I support the article.

Shri Brajeshwar Prasad (Bihar: General): May I speak, Sir?

Mr. Vice-President: I am very sorry. I think there has been sufficient discussion. Dr. Ambedkar.

The Honourable Dr. Ambedkar: Mr. Vice-President, Sir, of the many amendments that have been moved to this particular article, there are only four that remain for consideration. I will first take up the amendment of Mr. Krishnamoorthy Rao. It is a mere verbal amendment and I say straightaway that I am quite prepared to accept that amendment.

Then there remain the three amendments moved by my friend, Professor K. T. Shah. His first amendment is to substitute the words "every citizen" for the words "the citizens". Now, if that was the only amendment he was moving, I would not have found myself in very great difficulty in accepting his amendment, but he also proposes to remove the words "men and women equally" to which I have considerable objection. I would therefore ask him not to press this particular amendment on the assurance that, when the Constitution is gone through in this House and is remitted back to the Drafting Committee for the consideration of verbal changes, I shall be quite prepared to incorporate his feelings as I can quite understand that "every citizen" is better phraseology than the words "the citizens".

With regard to his other amendments, viz., substitution of his own clauses for sub-clauses (ii) and (iii) of Article 31, all I want to say is this that I would have been quite prepared to consider the amendment of Professor Shah if he had shown that what he intended to do by the substitution of his own clauses was not possible to be done under the language as it stands. So far as I am able to see, I think the language that has been used in the Draft it a much more extensive language which also includes the particular propositions which have been moved by Professor Shah, and I therefore do not see the necessity

for substituting these limited particular clauses for the clauses which have been drafted in general language deliberately for a set purpose. I therefore oppose his second and third amendments.

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

Mr. Vice-President: The question is:

"That in clause (i) of article 31, the words 'men and women equally' be omitted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (i) of article 31, the words 'that the citizens, men and women equally' have the right to an adequate' the words 'every citizen has the right to an adequate' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That for clause (ii) of article 31, the following be substituted.

'(ii) that the ownership, control and management of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters as well as in the shape of the seas along the coast of the country shall be vested in and belong to the country collectively and shall be exploited and developed on behalf of the community by the State as represented by the Central or Provincial Governments or local governing authority stautory corporation as may be provided for in each case by Act of Parliament';"

The motion was negatived.

Mr. Vice-President: The question is:

"That for clause (iii) of article 31, the following be substituted :—

(iii) that there shall be no private monopolies in any form of production of material wealth, social service, or public utilities nor shall there by any concentration of means of production and distribution in private hands and the State shall adopt every means to prevent such concentration or accumulation'."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (iii) of article 31, for the word 'concentration' the words 'undue concentration' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (v) article 31, for the word 'abused' the word 'exploited' and for the words 'economic necessity' the word 'want' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (v) of article 31, for the words 'their age' the words 'their age, sex' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (v) of article 31, the words 'to their age or strength' the words 'to their sex, age or health' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (v) of article 31, for the words 'that the strength and health', the words 'that the health and strength' be substituted."

The motion was adopted.

Mr. Vice-President: The question is:

"That Aritcle 31, as amended, be part of the Constitution."

The motion was adopted.

Article 31, as amended, was added to the Constitution.

Mr. Vice-President: We shall now proceed to Article 31-A.

Article 31—A

Shri M. Ananthasayanam Ayyangar (Madras: General): Mr. Vice-President, Sir, Amendment No. 927 stands in my name, but Mr. Santhanam has given an amendment to this amendment, for substitution of this. I find that that language is better. With your permission, Sir, he may be allowed to move his amendment in the place of mine. If you want me to formally move my amendment, I will do so, but I am prepared to accept the substitution for 31-A. I am prepared to adopt whichever course you direct.

Mr. Vice-President: Let Mr. Santhanam move.

The Honourable Shri K. Santhanam: Sir, I beg to move:

"That after article 31, the following new article be added :—

'31-A. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government'."

Sir, I need not elaborate the necessity for this clause. Many honourable Members had given similar amendments for village panchayats, but they had also attached to it conditions like self-sufficiency and other matters, which many of us did not consider desirable to be put into the directives. What powers should be given to a village panchayat, what its area should be and what its functions should be will vary from province to province and from state to state, and it is not desirable that any hard and fast direction should be given in the Constitution. There may be very small hamlets which are so isolated that even for fifty families, we may require a village panchayat; in other places it may be desirable to group them together so that they may form small townships and run efficient, almost municipal administrations. I think these must be left to the provincial legislatures. What is attempted to do here is to give a definite and unequivocal direction that the state shall take steps to organise panchayats and shall endow them with necessary powers and authority to enable them to function as units of self-government. That the entire structure of self-government, of independence in this country should be based on organised village community life is the common factor of all the amendments tabled, and that factor has been made the principle basis of this amendment. I hope it will meet with unanimous acceptance. Thank you, Sir.

The Honourable Dr. B. R. Ambedkar: Sir, I accept the amendment.

(At this stage Seth Govind Das rose to speak).

Mr. Vice-President: If you want to discuss anything, you can discuss after Prof. Ranga's amendment has been moved.

An Honourable Member: Prof. Ranga is not here.

Mr. Vice-President: I am on the horns of a dilemma. This amendment has been accepted. If I gave an opportunity to one speaker, then the whole question will have to be re-opened. I would value the advice of experts on this matter.

Shri M. Ananthasayanam Ayyangar: If you will permit me to say so, I shall only quote the procedure that is adopted in the House when it sits as a

Legislature. Even though a Member in charge of a Bill says he accepts an amendment, he only indicates the line of action for other Members to follow. They may go on speaking and he will always have a right of reply after they have spoken. Even to cut short the debate on certain matters which do not involve a principle, people would like to know what the attitude of the Government is. If it is found useless, they may not pursue that matter and it is for that reason that Dr. Ambedkar has said that he accepts the amendment. He still can reserve his reply after the speeches or debates are closed. I therefore request you to call upon other speakers who want to speak. It is a very important subject and every one would like to throw some light on it.

Mr. Vice-President: In that case, I shall call upon Mr. Prakasam to speak first.

Shri T. Prakasam (Madras: General): Mr. Vice-President, Sir, I feel happy that the Government have with grace accepted this amendment and agreed to introduce it in the Constitution. We should have tried to introduce this at the very beginning of the framing of the Constitution.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): Sir, I do not know which Government he has referred to.

Shri T. Prakasam: I am referring to the Government as it is constituted today.

This is a subject which is so very dear to the country and to the Members of this House as is shown by the way in which they have intervened in the general debate and brought it to the forefront of the discussion that this should find a place in the Constitution itself. Dr. Rajendra Prasad, who is the President of the Constituent Assembly, himself expressed his opinion in favour of having village republics as the basis of the Constitution.

Shri Vishwambhar Dayal Tripathi: What has the Government to do with our discussions?

Mr. Vice-President: The reference was to the President of the Constitutent Assembly and not to the Government.

Shri T. Prakasam: I have not referred to the Government. Thank you.

Dr. Rajendra Prasad has expressed his view in favour of making the village republic as the basis of the whole Constitution, which we are completing these days. On the 10th of May, Sir, Dr. Rajendra Prasad happened to express his views in this matter. The Constitutional Adviser, Sir B. N. Rau, when he dealt with this question, sympathised with the whole thing, but pointed out that it was too late to make any attempt to change the basis of the Constitution which has gone so far. I too agree, Sir, that if there was any mistake, the mistake was on our part in not having been vigilant enough and brought this before the House in proper time. When this was coming so late as that, I did not expect Dr. Ambedkar as Chairman of the Drafting Committee to be good enough to accept this.

Sir, a very serious situation was created by not making the village republic or the village unit as the real basis of the Constitution. It must be acknowledged on all hands that this is a construction which is begun at the top and which is going down to the bottom. What is suggested in this direction by Dr. Rajendra Prasad himself was that the structure must begin from the foundations and it must go up. That, Sir, is the Constitution which the departed Mahatma Gandhi indicated and tried to work up for nearly thirty years. Under these circumstances, it is very fortunate that this should come in at this stage, that this should be introduced and worked in a proper way. I must really congratulate Mr. Santhanam for having attempted to bring this amend

[Shri T. Prakasam]

ment in this form so that all others who had tabled amendments, of whom I was also one, reconciled ourselves to accept this, because this gives opportunity to the people of every province and the whole of India to go on this basis and work up the whole thing, without interrupting the progress of the Constitution at this stage.

Sir, one of the distinguished friends of this House was remarking the other day to me, "why are you thinking of these village republics and all these things? The bullock cart days have gone; they will never come back." This was his observation. I may point out to that friend that the village republic which is proposed to be established in the country and worked is not a bullock cart village republic. The republic that would be established, Sir, under this resolution, under the orders of the Government as it were, would be a village republic which would use the bullock carts, not for simply taking the fire-wood that is cut in the jungles to the towns and cities and getting some money for hire; these village republics would convert the work of the bullock carts to the work of carrying paddy and other produce which they produce in the village for their own benefit and for the benefit of the public. These village republics will also be serviceable to those men of ours who are now fighting in Kashmir. I was there the other day; I saw the way in which those friends in the battle field have been carrying on their work. Some of them said to us: "Well Sir, when you go back to the country, you please see that the prices of food-stuffs are reduced and that our people when they apply for small sites for habitation, they are secured." For all these things, the village republics will be of service to the military people in the best possible manner.

This is not a thing which should be looked upon with contempt, having forgotten our history and the history of the world. This is not the first time that this is introduced in our country. This is not a favour that we bestow upon our people by reviving these republics. When we fill the whole country with these organisations, I may tell you, there will be no food famines; there will be no cloth famine and we would not be spending 110 crores of rupees as we are doing today for the imports of food; this amount could be saved for the country. We have gone away far from the reality. These village republics will put a stop to black-marketing in a most wonderful manner. These village republics, if properly worked and organised on the basis of self-sufficiency, to which some may take exception, if the village is made a self-governing unit, it would put a stop to inflation also which the Government has not been able even to checkmate to any appreciable extent. This village organization will establish peace in our country. Today whatever the Government might be doing from the top here by way of getting food from other countries and distributing it, the food would not be distributed amongst the masses ordinarily through the agencies which we have got either in the Centre or in the provinces. All that trouble would be solved immediately so far as this business is concerned. Let me tell you above all that Communism—the menace the country is facing—we are seeing what is going in in China, we saw what was done in Czechoslovakia and we know what the position is in Burma, we know what the position is even in our own country with regard to Communism. Communism can be checked immediately if the villages are organized in this manner and if they are made to function properly. There would be no temptation for our own people to become Communists and to go about killing our own people as they have been doing. For all these reasons I would support this and I am very anxious that this must be carried out in all the provinces as quickly as possible, soon after the Constitution is passed, and I am seeing today the light and prosperity before the country when the Constitution is passed and when this village organization comes into existence.

Shri Surendra Mohan Ghose (West Bengal: General): Sir I am grateful to you for giving me an opportunity to express my feeling on this amendment moved by my honourable Friend Mr. Santhanam. Sir, you will find there is another amendment No. 991 which stands in my name almost identical with the present amendment which has been moved by my honourable Friend. I am gald that such an agreed amendment has been moved by my honourable Friend, Mr. Santhanam and that it has been accepted by the Honourable Law Minister, Dr. Ambedkar.

Sir, in my opinion the meaning of this Constitution would have been nothing so far as crores and crores of Indian people are concerned unless there was some provision like this in our Constitution. There is another point also *viz.*, for thousands and thousands of years the meaning of our life in India as it has been expressed in various activities, was this that complete freedom for every individual was granted. It was accepted that every individual had got full and unfettered freedom; but as to what the individual should do with that freedom there was some direction. Individuals had freedom only to work for unity. With that freedom they are to search for unity of our people. There was no freedom to an individual if he works for disruption of our unity. The same principle was also accepted in our Indian Constitution from time immemorial. Every village like the organic cells of our body was given full freedom to express itself but at the same time with that freedom they were to work only to maintain and preserve the unity of India.

Sir, our village people are so much familiar with this system that if today there is in our Constitution no provision like this they would not have considered this as their own Constitution or as something known to them, as something which they could call their own country's Constitution. Therefore, Sir, I am glad and I congratulate both my friend the Honourable Mr. Santhanam and the Honourable Dr. Ambedkar on moving this amendment as well as for acceptance of the same. Sir, I commend this.

Seth Govind Das (C.P. and Berar: General): *[Mr. President, very few speeches are being made now-a-days in this House in Hindi. I would, therefore, resume my practice of speaking in Hindi unless of course I have something to explain to my south Indian friends which requires my speaking here in English.

During the course of the speech he made while presenting this Draft to the House Dr. Ambedkar made some remarks about villages which caused me and, I believe, a great majority of the members of this House, great pain. It is a matter of deep pleasure to me that he has at last accepted the amendment moved by Shri Santhanam. We need not complain if one comes to the right course, though belatedly.

I belong, Sir, to a province in which perhaps the greatest progress has been made in respect to this matter. Our village Panchayats, our judicial Panchayats, and our laws for Janapadas are the talk of the whole of India today. There was a time when our province was regarded as a very backward province. But today the whole country will have to admit that our province though small in size, has given a lead in many matters to the other provinces of the country. So far as the scheme of village Republics is concerned, it is an undisputed fact that our province has progressed more than any other province towards its fulfilment.

Ours is an ancient, a very ancient country and the village has had always an important position here. This has not been so with every ancient country. In Greece, for instance, towns had greater importance than villages. The

* [ ] Translation of Hindustani speech.

[Seth Govind Das]

Republics of Athens and Sparta occupy a very important place in the world history today. But no importance was attached by them to the villages. But in our country the village occupied such an important position that even in the legends contained in most ancient books—the Upanishads—if there are descriptions of the forest retreats, of the sages, there are also descriptions of villages. Even in Kautilya's Arthasastra there are to be found references to our ancient villages. Modern historians have also admitted this fact. We find the description of our ancient village organisation, in 'Ancient Law' by Mr. Henry Man, 'Indian Village Community' by Mr. Baden Powell and in 'Fundamental Unity of India' by Shri B. C. Pal. I would request the members of this House to go through these books. They will come to know from these books the great importance the villages have had in India since the remotest times. Even during the Muslim Rule villages were considered of primary importance. It was during the British regime that the villages fell into neglect and lost their importance. There was a reason for this. The British Raj in India was based on the support of a handful of people. During the British regime Provinces, districts, tahsils and such other units were formed and so were formed the Talukdaris, Zamindaris and Malguzaris. The British rule lasted here for so many years only on account of the support of these few people.

Just as Mahatma Gandhi brought about a revolution in every other aspect of this country's life, so also he brought about a revolution in the village life. He started living in a village. He caused even the annual Congress Sessions to be held in villages. Now that we are about to accept this motion I would like to recall to the memory of the members of this House a speech that he had delivered here in Delhi, to the Asiatic conference. He had then advised the delegates of the various nations to go to Indian villages if they wanted to have a glimpse of the real India. He had told them that they would not get a picture of real India from the towns. Even today 80 per cent. of our population lives in villages and it would be a great pity if we make no mention of our villages in the Constitution.

I support the amendment moved by Honourable K. Santhanam. I hope that the Directive Principles laid down in the Constitution would enable the provinces to follow the lead given by the Central Provinces in the matter and I hope a time will come when we shall be able to witness the ancient glory in our villages.]

Shri V. I. Muniswamy Pillai (Madras: General): Mr. Vice-President, Sir, by my Honourable Friend Mr. Santhanam moving this amendment and the Chairman of the Drafting Committee expressing that he is going to accept it shows the real feeling of the Sovereign Body towards their less fortunate brethren living in the villages. My Honourable Friend Mr. Prakasam referred to the statement made by the revered leaders Rajendra Prasad and Mahatma Gandhi. But we know it for a reality that the villages are in rack and ruin, and if there is to be any amenities or self-government, it is to the villages that the Sovereign Body must give them. The other day when I made a speech on the Draft Constitution, I pointed out that there is no provision to give the rural areas any choice of self-government. Now, under this amendment we bestow a certain amount of power to make the villages self contained and to have self-government there. Sir, I am sure the seven lakhs of villages in the whole of India will welcome the provision of this amendment in this Constitution. Sir, it is with the revenue that is derived from the rural areas that it has been possible to create towns, with all amenities therein. But the man who gives the revenue by way of taxes could not get even the rudiments of amenities, due to a citizen. I feel that by accepting this amendment we will go a long way to re-construct

the villages that have been allowed to go to rack and ruin for centuries together. If the pies are taken care of, the rupees will take care of themselves. So I feel that by having this amendment, we are going a long way towards reconstructing our villages which are in such dire necessity of such reconstruction today.

Dr. V. Subramaniam (Madras: General): Mr. Vice-President, when our Mother India delivers her Constitution, if there is any living cell in the Constitution, it will be this village panchayat amendment which has been brought forward by my Honourable friend, Mr. Santhanam. It is a well-known fact that India is standing today as a self-governing unit in the world because of this living cell in our body politic—the village panchayat. Today, if we want to make the country strong and self-sufficient in every respect, this clause in the Constitution or in the Directive principles is very necessary.

Now, there has been some controversy about self-sufficiency. My interpretation when we speak of a village being self-sufficient is this. It may produce, say ground-nut in large quantities, and it may export it, even though it may be forced to import Dalda and other substances for the needs of the people in the village. By saying that it is self-sufficient, we only mean that it may grow all the articles that it can and also import what is necessary, from the neighbouring villages. That is my interpretation. But these are matters to be worked out in detail by the village panchayats themselves.

It is clear that as far as this amendment is concerned, there can be no two opinions about it. This amendment must be carried, and in our future constitution, much more powers must be given to the villages. As a matter of fact, we do not know how many carpenters there are in our land. If we have the panchayats, we need go only to their records and pick up the number of carpenters in every village. These panchayats will serve a very useful purpose. This clause is very essential, and I support this amendment.

Shri Satyanarayan Sinha (Bihar: General): Sir, we have had enough discussion, and after Shri Bharathi, I would like to move for closure.

Shri L. Krishnaswami Bharathi (Madras: General): Mr. Vice-President, Sir; I congratulate the Honourable Mr. Santhanam for moving and Dr. Ambedkar for agreeing to this amendment. I must confess that I am not fully satisfied with this amendment, for the very simple reason that even today even under the present Constitution, I think the Provincial Governments have enough powers to form village panchayats and operating them as self-governing units But to the extent to which it goes, I must express my satisfaction. It must be remembered that this is in the directive principles, and I see no reason why the idea of self-sufficiency should not have been accepted by Mr. Santhanam. The reasons that he gave for not accepting that principle are not at all convincing In fact, two or three Honourable Members—Mr. Ranga, Shri Ananthasayanam Ayyangar, and Mr. Prakasam, have given amendments with these ideas. Mr. Ananthasayanam Ayyangar's amendment says there is great need for effective decentralisation of political and economic powers. After all, what the amendment seeks to give is only political independence. Political independence apart from economic independence, has no meaning. The idea behind the Directive Principles is to emphasise the way in which we want the country to function, and for that we must make it quite clear to the whole world that economic democracy is important and for that decentralisation of economic power is important. It is that aspect of the matter which Gandhiji emphasised. Decentralization both in the political and economic sphere is absolutely essential if India is to function as a democracy.

[Shri L. Krishnaswami Bharathi]

In fact, speaking at the Asian Relations Conference, Mahatmaji said pointing out to the City of Delhi:—

"This is not India. You people are seeing Delhi—this is not India. Go to villages; that is India, therein lives the soul of India."

Therefore, I do not know why they should fight shy of 'self-sufficiency'. It has been sufficiently explained by Mahatmaji, and if it is necessary I would like even to say some words from his speeches.

The Honourable Shri K. Santhanam: May I point out to the Honourable Member that self-government is not merely political? It may be economic or spiritual.

Shri L. Krishnaswami Bharathi: I quite understand it and that is the reason why it should be made clearer. If self-government includes that, it is much better that we explain it because that explanation is very necessary. I would very much like the word "self-sufficiency" in the Gandhian sense of the word, self-sufficiency not in all matters, let it be remembered, but in vital needs of life, self-sufficiency in the matter of food and clothing as far as possible. That is what Mahatmaji said. It does not mean absolute independence. Sir, I would ask leave to read from Mahatmaji's articles certain important portions which will clear up the matter. This is what Gandhiji wrote:—

"My idea of Village Swaraj is that it is a complete republic, independent of its neighbours for its vital wants, and yet interdependent for many others in which dependence is a necessity."

An Honourable Member asked, "Well, what can you do? Some villages produce only paddy, they cannot have self-sufficiency". Is it such an impossible proposition? Gandhiji was emphatic in saying that he was not at all suggesting that the village should be independent of all these things, but in certain matters you must have self-reliance, the basic idea being, "*no work, no food*". Now the villagers think that as it is a Swaraj Government, *khadi* and food will flow from the heavens as *manna*. Gandhiji's idea in this self-sufficiency is, "Don't expect anything from the Government. You have got your hands and feet; work; without work you will have no food. You can produce your own cloth, you can produce your own food. But if you do not work, you shall have no food, no cloth." That is the basic idea of decentralization and economic democracy. And if the villagers are to have that idea, we must put it here and tell them about self-sufficiency, "Do not expect anything from the Government. Who is the Government? After all you constitute the Government. You must work, you must produce. Do not depend on these mills. Go on with your *charkha*, make your own food". That is the basic idea of self-sufficiency and decentralization and economic democracy.

Mahatmaji said:—

"My idea of Village Swaraj is that it is a complete republic, independent of its neighbours for its vital wants, and yet interdependent for many others in which dependence is a necessity. Thus every village's first concern will be to grow its own food crops and cotton for its cloth. It should have a reserve for its cattle, recreation and playground for adults and children. Then if there is more land available, it will grow *useful* money crops, thus excluding *ganja, tobacco, opium* and the like. The village will maintain a village theatre, school and public hall. It will have its own waterworks ensuring clean supply. This can be done through controlled wells and tanks. Education will be compulsory up to the final basic course. As far as possible every activity will be conducted on the co-operative basis. There will be no castes such as we have today with their graded untouchability. Non-violence with its technique of *Satyagraha* and non-cooperation will be the sanction of the village community..."

(At this stage Mr. Vice-President rang the bell).

Sir, I think there are only a few more lines of Mahatmaji's picture of life. With your leave I should like to finish it.

"...There will be a compulsory service of village guards who will be selected by rotation from the register maintained by the village. The government of the village will be conducted by the *Panchayat* of five persons, annually elected by the adult villagers, male and female possessing minimum prescribed qualifications."

This is a rough idea of what Gandhiji felt, and therefore, in my opinion it is very necessary that this sovereign body should enunciate and give its views on this fundamental tenet of Mahatma Gandhi, his idea being that there must be decentralisation and the village must function as an economic unit. Of course, the Honourable Mr. Santhanam said that it is included. I only wanted that it should be made more explicit so that Mahatmaji's soul will be very much pleased. He said that India dies if the villages die, India can live only if the villages live.

The Honourable Dr. B. R. Ambedkar: Sir, as I said, I accept the amendment. I have nothing more to add.

(An Honourable Member rose to speak.)

Mr. Vice-President: In this matter my decision is final. I have not yet found anybody who has opposed the motion put forward by Mr. Santhanam. There might be different ways of praising it, but at bottom and fundamentally, these speeches are nothing but praising the amendment.

The question is:

"That after article 31, the following new article be added :—

'31-A. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government'."

The motion was adopted.

Mr. Vice-President: The question is:

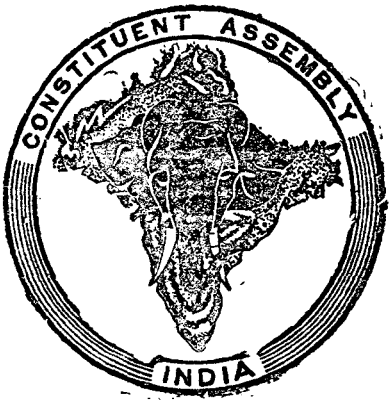
"That the new article 31-A stand part of the Constitution."

The motion was adopted.

Article 31-A was added to the Constitution.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 23rd November 1948.

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Volume VII
No. 11

Tuesday
23rd November
1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 23rd November 1948

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

DRAFT CONSTITUTION—(Contd.).

Article 32

Shri Syamanandan Sahaya (Bihar: General): Sir, I will move amendments Nos. 933 and 934 together with your permission. I move:

"(i) That in the article 32 after the word 'education' a comma and the words 'to medical aid' be added; and

(b) that for the words 'of undeserved want' the words 'deserving relief" be substituted."

This part deals with directives to the Government in power and the article deals with different aspects of social relief and other amenities which the State should strive to secure for the well being of the people. These include the right to work, education, public assistance in case of unemployment, old age, sickness, disablement and other "cases of undeserved want". The acceptance of my amendment would give the State an added responsibility of medical relief also.

In the second amendment, although the words "undeserved want" may have been used in other constitutions, I submit that the words "deserving relief", although not new to the language of constitutions, expresses the idea better and should be accepted.

With the conditions of health and the figures of mortality in this country as also the duration of life according to actuarial statistics I submit that special attention should be devoted to medical aid.

I do not think the amendment requires much argument to support it. Sir, I move.

Shri H. V. Kamath (C.P. & Berar: General) : Mr. Vice-President, I move my amendment No. 936 as amended by my amendment No. 69 in List II. If the two are taken together, my intention will be very clear. In effect my amendment will substitute the word 'State' for the word 'public' occurring in this article. I find that provision as regards food, clothing, shelter and medical aid are covered by article 38 which seeks to raise the standard of living and provide for public health and such other amenities. I think that my friend Mr. Syamanandan Sahaya's amendment as regards medical aid is also covered by the same article. There is no need to include these provisions as regards food, clothing, medical aid, etc. specifically in this article.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I oppose the amendments.

Mr. Vice-President (Dr. H. C. Mookherjee): I put the amendments to vote. *Amendments Nos. 933 and 934, and 936 as further amended, were negatived.*

Mr. Vice-President: I shall now put article 32 to the vote of the House. The question is:

"That article 32 stand part of the Constitution."

The motion was adopted.

Article 32 was added to the Constitution.

Article 33

Mr. Vice-President: The House will now take up article 33 for consideration.

Shri V. I. Muniswamy Pillai (Madras : General) : I am not moving my amendment No. 940 as the subject-matter relates to the Schedules.

Mr. Vice-President: I shall now put article 33 to the vote of the House. The question is :

"That article 33 stand part of the Constitution."

The motion was adopted.

Article 33 was added to the Constitution.

Article 34

Mr. Vice-President: The House will now take article 34 into consideration.

(Amendments Nos. 938 to 947 were not moved.)

Shri Mahavir Tyagi (United Provinces : General) : Sir, I beg to move :

"That article 34 be numbered as 34(1) and the following new clause be inserted after clause (1) so re-numbered :

'(2) The State shall encourage the use of Swadeshi articles and promote cottage industries, especially in the rural areas with a view to making as far as possible those areas self-sufficient'."

In moving this amendment I wish to bring to the notice of the House the fact that the condition of rural areas is very bad today. In fact rural areas have been depleted, and deliberately deprived and made devoid of all their old initiative and incentive to work. The conditions in the villages are so bad that the artisan classes have all practically come to the towns. Even a barber, if he is good at razor, does not stay in the village but goes to towns where more money can be had. Attendance on villagers does not enable him to earn his daily bread. He goes to the town and opens a saloon. The village carpenter also does the same; if he knows his job well. He goes to town and easily earns Rs. 5 or 6 a day. Masons do likewise and also the tailors. All the craftsmen flock to towns abandoning their village homes. I want to put it before the House that, under these conditions, when the villagers have been reduced to the position of carrying their dirty clothes to the town to be washed, what will happen to three-fourths of our population living in the villages ? We have put it on record that what we want is economic democracy. How will economic democracy come about in the existing state of affairs in the rural areas ?

We have given the villager only the right of vote. And this too we have given him only to take back after every five years—he will give us his vote. He is only the custodian of the right of vote; and we being his leaders he must return the vote to us at the time of elections. We are always their leaders. Sir, I have had experience of Legislative Assemblies for the last ten or twelve years and I know that we are not treating the villagers fairly. All budget amounts are mostly spent in towns. Only in the towns you have electricity and all sorts of other amenities. Their roads are cemented. There is public health only in the towns. But the villagers are totally neglected. Every man who has the least initiative comes to the towns. All intelligence has come away and now it is only the sluggish people who are left in the villages. Anyone who has passed the Matriculation Examination comes to the towns and employs himself in some service or other. So the villages are

fast going to ruination. Now, Sir, it is very good to say that we want economic equality and economic democracy but cannot we on this occasion direct the future governments of the country that this is the line through which we want to achieve our objective of economic democracy? I am not opposed to big concentrations of industries in big towns. In fact, these big industries have been drawing muscular man-power from the villages. Villages have been their recruiting grounds. Villagers come and employ themselves in these big mills only to demoralise themselves in the bad atmosphere in towns. That is the reason why the Britishers purposely kept them weak and poor from all points of view. Initiative they have been deprived of, because otherwise they would not work as mere labourers. Sir, all the villagers cannot come to the towns. Even if you go on increasing the number of industrial towns, you cannot accommodate the vast populations living in the rural areas. They will have no housing in the towns. The purpose of my placing this amendment before you is that instead of the muscular power going to the machine, I want to carry the machines to the sources of muscular power. I want the machines to be taken to the villages so that the villagers who are living in their own sweet homes in their own healthy environments may not be snatched away from their families. At present, Sir, the pressure on land has become too much. The House may be surprised to know that in 1891 only 61 per cent of our population were employed on agriculture. In 1901, it was 66 per cent and in 1931 it was 72 per cent. Land has been torn into tiny fragments and agriculture has become totally uneconomic. If things go on like that, most of the villagers will come to the towns. We are enjoying our life in towns, while the villagers in whose name we come here are deprived of even their ordinary privileges of citizenship. Therefore, Sir, I submit that this amendment may kindly be accepted. Our Party, the Congress Party, has been propagating Swadeshi and cottage industries since its very inception, but now that the time has come for making our constitution, if we ignore the villagers, that will be disappointing to the village people. I do not want to take any more time of the House because most of the Members of this honourable august House already appreciate the usefulness of the amendment that I am bringing forward. I hope honourable Members will consider the feasibility of giving to the world a new type of social revolution. In Russia, they say, there is already achieved economic democracy, but this economic democracy in Russia has concentrated all power in the hands of the State, with the result that the State has become autocratic. If you want to combine political democracy with economic democracy and translate into life Dr. Ambedkar's maxim, "One man, one unit", then you should make the villages self-reliant and self-sufficient. Otherwise the millions who are unemployed in the rural areas will never enjoy the fruits of freedom; they will remain slaves of the townsmen as they are today. Political consciousness and patriotism will come only when they are economically contented. The way to do this is to give them cottage industries so that they can live happily with their families in their own happy surroundings. It is only then that they can exert some influence on the government that be and contribute towards the progress of the country. With these words, Sir, I move this amendment and I hope the House will accept it.

[Shri T. A. Ramalingam Chettiar]

article 34 itself we add as follows:

"And in particular the State shall endeavour to promote cottage industries on co-operative lines in rural areas."

If you will permit me, I will move that amendment, Sir,

Mr. Vice-President : Do you want an addition to the article which has been already accepted and passed?

Shri T. A. Ramalingam Chettiar : This is the article which is under consideration now.

Shri Amiyo Kumar Ghosh (Bihar: General): Sir, there is an amendment, standing in the name of Shri Gupta Nath Singh which is exactly the same as the amendment now proposed to be moved. The amendment number is 954.

Shri T. A. Ramalingam Chettiar : What I want to move is in the place of Mr. Tyagi's amendment.

Shri Amiyo Kumar Ghosh : The new clause 34-A which is sought to be moved is exactly the same as this. It says:

"The state shall endeavour to develop and promote cottage industries and make the villages self-sufficient as far as possible."

An Honourable Member : Are two persons permitted to address the House at the same time ?

Mr. Vice-President: Two persons are not speaking. I am afraid you are making a mistake. Mr. Ghosh should have resumed his seat.

Mr. Chettiar, have you moved your amendment?

Shri T. A. Ramalingam Chettiar: That is the amendment, Sir.

Mr. Vice-President : Mr. Ghosh, what is it that you want to say ? Please come to the mike.

Shri Amiyo Kumar Ghosh: Mr. Vice-President, what I was submitting was that there is already an amendment (No. 954) to the same effect and that instead of moving an amendment to Shri Mahavir Tyagi's amendment, it is better that we should take the amendment No. 954, which is to the same effect. I do not see why we should move this amendment over the amendment of Shri Mahavir Tyagi.

The amendment which is now going to be moved by my friend is to the effect that the State shall endeavour to develop and promote cottage industries etc. as an amendment to Shri Mahavir Tyagi's amendment, but I submit that when there is already an amendment standing in the name of Shri Gupta Nath Singh to the same effect that the State shall endeavour to develop and promote cottage industries and make the villages self-sufficient as far as possible, there is no need of moving this amendment. We can therefore take up amendment No. 954 for discussion and if it is acceptable to the mover, then we can accept it and put it as clause 34-A.

organisation for the purpose of undertaking these things is necessary and so far we have been able to find only two methods, either the introduction of master capitalists who will exploit labour or co-operative societies. Of course, it is not the intention of any of us that we should encourage these master capitalists, who practically exploit the village labourers and even town labourers. So the only method that is available and that is open to us is the formation of co-operative societies to undertake the supply of raw materials and the marketing of the produce. It is on that account, Sir, that I have ventured to move this amendment and I hope the House will accept it unanimously.

Shri H. V. Kamath: Mr. Vice-President, Sir, I am happy that articles 34, 32 and 31 have been incorporated in this Part dealing with directive principles of state policy. If the provisions in these articles are going to be seriously implemented and Government will really and in earnest take action in accordance with the provisions of these articles, I have no doubt that they will provide a new charter, the charter of a new life for the exploited, the disinherited and the under-privileged, and they will provide the basis or the framework for the blue-print of economic and social democracy in our country. I was very much heartened to hear Dr. Ambedkar saying the other day in this House that the Constitution seeks to lay down the ideal of economic democracy in this country. Indeed, Sir, that is the ideal we have got to strive for in this country. It may be argued that it is a vague idea. What is economic democracy and what is social democracy ? Pandit Nehru, if I remember aright, when he moved the Objectives Resolution in this House hoped that our country along with the rest of the world would move towards socialism, though in his own mind there were doubts as to what democracy meant or political democracy meant or economic democracy meant. But, Sir, article 30 says that we will have social, economic and political justice. Is it not far better to say that we will have political, economic and social democracy, rather than mere justice, which is an abstract conception ? (Interruption).

This concept of economic and social democracy has formed the basis, the content of most Congress resolutions that have been passed since 1936; especially, Sir, I would refer to the resolution passed at the Meerut session of the Congress, which gives a definite meaning to this concept of economic and social democracy. Dr. Ambedkar said that to his mind, political democracy means one man, one vote; economic democracy means one man, one value. I, Sir, would say that social democracy, to my mind, means : all men, one class; all men one caste; and I hope, Sir, that we are moving towards the creation of a casteless and classless society which Mahatma Gandhi envisaged for the social order in India.

Here, Sir, political democracy we have now secured. Through experience, not merely here, not merely in Europe, not merely in America, but all over the world, we have realised today that political democracy is not enough; unless you translate this political freedom, this political democracy into the life of the common man in economic and social terms this political democracy will not work and political democracy will be dead.

That is why, when democracy is opposed or resisted, it gives rise to a totalitarian form of Government. If political democracy is allowed to evolve, to grow, into economic, social democracy, then we would not have strife, we will not have wars, we will not have a totalitarian form of Government. Even today, we see the world is half slave and half free. In Asia and Africa vast tracts of land are under colonial rule. That is why this movement of communism is growing apace. You may call them communist bandits or communist fellow travellers. It is no use dubbing them and calling them names. Unless

[Shri H. V. Kamath]

you change your exploiting social order into a freer order, this movement for violently ending the social order will continue. Therefore, we should take heed betimes and try to establish in our country economic and social democracy. Here, Sir, in article 34 we have got an important provision. It is stated, "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, work etc. . . . . ". I am glad that this has been incorporated. We have got three alternatives or all of them : legislation, organisation or in any other way. I hope, Sir, the Government will take advantage of this and act up to it and see that in accordance with the terms of the article, all workers, industrial or otherwise, are secured work, a living wage and a decent standard of life. We want a society of workers; every one must work. We should inscribe on the portals of our temple of democracy that he who will not work shall not eat : No work, no food. In the Bible this is laid down, Sir. In the Gita, it is said, he who eats without sacrifice, without work, he is a theief (स्तन ऐव स;); he steals from society. We must therefore lay down this concept that work must be compulsory, work must be obligatory. In article 32, it is said that the State shall secure the right to work; article 34 goes further and says, that the State shall secure work. There are millions of people in India today who want to work, but do not get work. There are a few parasites who can work, but do not want to work. As Bernard Shaw has said, at one end we have got men with appetites but no dinners; at the other, we have men with dinners, but no appetites. This social order is a house divided against itself. So long as this house divided continues, there will be no peace in the world; there will be no happiness in the world. We will have violent movements; we will have desperate men armed with bullets, armed with bren guns, trying to overthrow the social order. You cannot entirely blame them; you cannot find fault with them only; the fault lies also with those of us who want to perpetuate the exploiting social order. The answer to the bullet and bren gun is not the tank and the bomber as we see in Malaya; the answer is a change in the social order. I hope these articles will be implemented by the Government that is going to take office in the new India of the future, and that that Government will try to establish economic and social democracy.

I would only make one more observation. To India through the ages has been given the mission of preaching the noble and sublime ideal, the concept of spiritual democracy, of which political, social and economic democracy are mere off-shoots. If true spiritual democracy takes root in our society, there is no doubt that we shall show to humanity a new way of life, and if all other countries in the world have tried to establish economic and social democracy by violence, by disorder, by strife, we can make a beginning here and go forward and try to achieve this new order . . . . .

Mr. Vice-President : I am afraid that you are taking too much time over the amendments.

Shri H. V. Kamath: I am speaking on the article also.

Mr. Vice-President: You have sufficiently explained the article.

Shri H. V. Kamath : I have finished, Sir. We in our country must try to bring about this new order by methods of peace and non-violence and thus show a new way to the world. Otherwise, the present order, exploiting as it does, will perish, consumed in its own fires. But I hope out of the ashes will rise like unto the Phoenix of old, a new order with the light of morning in its eyes.

Shri S. Nagappa (Madras: General): Sir, I do not want to take the time of the House; I just want to make an amendment. After the words "to all

workers, industrial", the word "agricultural" may be added. Sir, I need not say that the bulk of the working population consists of agricultural workers.

Mr. Vice-President: This is out of order.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, as there is a considerable amount of feeling that the Directive Principles should make some reference to cottage industries, I am agreeable in principle to introduce in article 34 some words to give effect to the wishes of the Members of this House. I am therefore prepared to accept the amendment moved by my friend Mr. Ramalingam Chettiar, subject to the substitution of one or two words. One substitution that I would like to make is this. After the words "cottage industries on" I would like to add the words "individual or". I would like to substitute his word 'lines' by the word 'basis'. So that the amedment would read as follows:

"And in particular the State shall endeavour to promote cottage industries on individual or co-operative basis in rural areas."

That, I think, would meet the wishes of most of the Members who are particularly interested in the subject.

I may also add that I am quite agreeable to accept the amendment moved by Mr. Nagappa that the word 'agricultural' be added after word 'industrial'.

Mr. Vice-President: That was not allowed.

The Honourable Dr. B. R. Ambedkar: I have no objection if you allow that. I think Mr. Nagappa's suggestion that agricultural labour is as important as industrial labour and should not be merely referred to by the word 'otherwise', has some substance in it. However, it is a matter of ruling and it is for you to decide.

Shri T. A. Ramalingam Chettiar: I accept Dr. Ambedkar's amendments.

Shri L. Krishnaswami Bharathi: (Madras: General): Sir, may I suggest, that we may stop with the word cottage industries and omit the rest. Why do you want the words 'on individual or co-operative basis'? There is no point in adding these words unless you want to lay special emphasis on co-operative basis. I would like these words 'on individual or co-operative basis' to be omitted.

The Honourable Dr. B. R. Ambedkar: May I explain, Sir ? I find among the Members who are interested in the subject, there are two divisions: one division believes in cottage industries solely on a co-operative basis; the other division believes that there should be cottage industries without any such limitation. In order to satisfy both sides, I have used this phraseology deliberately, which, I am sure, will satisfy both views that have been expressed.

Shri M. Ananthasayanam Ayyangar: (Madras: General): I do not want to speak.

Mr. Vice-President: I think we have discussed this matter sufficiently. We shall pass on to the actual voting.

Shri Mahavir Tyagi: In the hope that this will all be done on the basis of self-sufficiency, I accept the amendment to my amendment as finally proposed by Dr. Ambedkar and in that case I shall have to withdraw mine.

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

Shri Amiyo Kumar Ghosh: Sir, I want to know whether 'agricultural workers' have been included or not.

Mr. Vice-President: It has not been included but I am quite prepared to go back on my ruling provided the House as a whole, without any dissention, accepts the suggestion of Dr. Ambedkar.

Honourable Members: Yes.

Mr. Vice-President: Then I shall put the amendment of Shri Ramalingam Chettiar as amended by Dr. Ambedkar to the vote.

The amendment, as amended, was adopted.

Mr. Vice-President: Now I put the amendment as further modified by Mr. Nagappa.

The amendment, as further amended, was adopted.

Mr. Vice-President: Now the motion before the House is:

"That article 34, as amended in the manner just mentioned, should form part of the Constitution."

The motion was adopted.

Article 34, as amended, was added to the Constitution.

Article 34-A

Mr. Vice-President: Now we come to amendment No. 952 to article 34-A.

(Amendment No. 952 was not moved.)

Amendment No. 953—Shri Ranbir Singh Chaudhari.

Chaudhari Ranbir Singh (East Punjab: General): I am not pressing it but I want to speak on the article.

Shri M. Ananthasayanam Ayyangar: This amendment is covered by article 34 as amended. These are all matters not so much for a Constituent Assembly to introduce in the Constitution but for legislation at the Centre or in the provinces. I therefore think this need not be moved. Even at present usury is restricted in the provinces. A percentage for interest is fixed.

Mr. Vice-President: As the wording is different Shri Ranbir Singh Chaudhari has a right to move his amendment but whether he will do so or not lies with him. I hope he will not take up too much time of the House. You ought to remember that our President wants that we should finalize our Constitution by the 9th December. Then there was some talk about moving it further back. We owe a certain duty to the country and I have been receiving a series of wires so much so that sometimes I am awakened in the middle of the night, throwing the blame on us.

Chaudhari Ranbir Singh: *[Mr. Vice-President, I wanted to make a few observations on the general article first and that is why I rose a little while ago to speak. But as I did not then get an opportunity to speak, with your permission, Sir, I would like to express my views now within a minute or two. I have already said that I would not press my amendments. Besides, there is one thing, more. As Shri Ayyangar has stated.....]

Mr. Vice-President: Kindly speak on the amendment.

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* [ ] Translation of Hindustani Speech.

Mr. Z. H. Lari (United Provinces: Muslim): Sir, on a point of order. Can any person be allowed to address the House unless he formally moves a motion?

Mr. Vice-President: You are right.

(Addressing Mr. Chaudhari) You will first of all move the motion and then address the House.

Chaudhari Ranbir Singh: My new article reads thus:—

"That after the article 34, the following new article 34-A be added :—

'34-A. (a) The State shall endeavour to secure by suitable legislation or economic organisation or in any other way the minimum economic price of the agricultural produce to the agriculturists.

(b) The State shall give material assistance to national co-operative organisations of the producers and consumers.

(c) Agricultural insurance shall be regulated by special legislation.

(d) Usury in every form is prohibited'."

Mr. Vice-President: May I take it that you are moving this amendment formally? I suppose this is done.

Mr. Z. H. Lari: He says, it reads thus. He has not moved his amendment.

Mr. Vice-President: Suppose, you waive that point. Now, Mr. Chaudhari, you can address the House.

Chaudhari Ranbir Singh: *[Mr. President, I am afraid that one class remains still to whom the provisions of article 34, as it stands now or even with the amendment of Shri Nagappa as accepted by Dr. Ambedkar, would not afford any protection and whose economic interests would, therefore, remain unsafeguarded. My reference is not to the class of landlords. The fact on the contrary is that I do not desire to speak for that class at all. My reference is to the class of peasant proprietors of the Punjab who neither exploit anybody nor like to be exploited by anyone. Speaking for the peasantry, I would like to remark that so long as we do not fix some economic price of the produce, they will continue to suffer from a grave injustice. The duty of the State today is not merely to maintain law and order but also to resolve the economic complexities, the solution of which is the main problem of the peasantry at present. Sometime back the prices of gur and other commodities fell so much that they came down to one-fourth of what they were four or five months before. Ours is an agriculturist country and in this country such violent disturbances of the price level cannot but radically disturb the agricultural economy. I do not want to press this very much because I know that this point is covered by the previous article. But these matters should be kept in mind. My purpose is to emphasise that without fixing the economic price of agricultural products, there can be no stability in the economic life of the agriculturists and it is very necessary to make it stable. The other three parts also lend some support to this view. Since a good many members of the House think that the purpose of my amendment is covered by the previous article, I do not move it.]

Mr. Vice-President: I shall not, therefore, put it to the vote. The next amendment is that standing in the name of Mr. Guptanath Singh.

Shri Guptanath Singh (Bihar: General): Sir, My purpose, I see, has been served by the amendment of Dr. Ambedkar to a great extent, I, therefore, do not wish to move my amendment No. 954.

* [ ] Translation of Hindustani speech.

Article 35

Mr. Vice-President: Now, we come to article 35.

The Honourable Dr. B. R. Ambedkar: Sir, I have to request you to allow this article to stand over for the present.

Mr. Vice-President: This article is allowed to stand over for consideration later. Is it agreed to by the House?

Honourable Members: Yes.

Article 36

Mr. Vice-President: Then, the motion before the House is that article 36 do form part of the Constitution. Amendment No. 961 is a negative motion. So we come to amendment No. 962—Shri L. K. Maitra.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. Vice-President, Sir, I beg to move:

"That in article 36, the words 'Every citizen is entitled to free primary education and' be deleted."

Sir, I will strictly obey the injunction given by you regarding curtailment of speeches. I will put in half a dozen sentences to explain the purpose of this amendment. If this amendment is accepted by the House, as I hope it will be, then the article will read as follows:—

"The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

It will thus be seen that this article 36 will be brought into line with the preceding and the subsequent articles, in form, at any rate. The House will observe that articles 30, 31, 32, 33, 34, 35, 37 and 38 all begin with the words—"The State shall.....so and so". But article 36 alone begins with—"Every citizen is entitled to.....etc." Therefore if we delete the words I have referred to, this article also will come into line with the other articles. Besides the question of form there is also a question of substance involved in this. Part IV deals with directive principles of State policy, and the provisions in it indicate, the policy that is to be pursued by the future governments of the country. Unfortunately, in article 36, this directive principle of State policy is coupled with a sort of a fundamental right, i.e. "that every citizen is entiled.....etc." This cannot fit in with the others. Here a directive principle is combined with a fundamental right. Therefore, I submit that the portion which I have indicated, should be deleted.

Now, there is another point, and I particularly want to draw the attention of the Drafting Committee to it. You will see that in the original draft, in the margin of this article there is a note, "provision for free primary education." But in article 36, we are not making any distinction between primary and secondary educations. That is to say, to every citizen, up to the age of 14 years, the State shall provide, within ten years of the commencement of this Constitution, free and compulsory education. In other words, the education need not be confined to the primary but it may go up to the secondary stage, so long as the person is upto the age of 14. Therefore, the marginal note should be amended accordingly. Sir, I move.

Mr. Nazirúddin Ahmad: (West Bengal: Muslim): Sir, I beg to move:

"That in article 36, for the word 'education', the words 'primary education' be substituted."

Sir, this article, as has been clearly pointed out by the previous speaker, deals with primary education.

It begins with primary education and the marginal note also makes it clear. But as has been pointed out, towards the end what is said is that the State shall provide within a period of ten years from the commencement of this Constitution for "free and compulsory education." I believe from the context and from other internal evidence that what was intended was compulsory 'primary' education. The State cannot undertake to give compulsory education of a secondary character.

Pandit Lakshmi Kanta Maitra: As far as possible!

Mr. Naziruddin Ahmad: But then if you enlarge the scope of the Government's duty, it will be making it innocuous. I think it would be better to confine it to primary education and that should be a directive principle of the State. I think that is what is meant. The word, if introduced, would, I submit, fill up an obvious lacuna.

Mr. Vice-President: It would be as well if you move the other amendments in your name as that would save the trouble of your coming up again.

Mr. Naziruddin Ahmad: Sir, I move:

"That in article 36, a semi-colon be inserted after the word 'education'."

As this relates only to punctuation, I am asking the Drafting Committee to consider it.

Mr. Vice-President: Article 36 is now open to general discussion.

Shri B. Das (Orissa: General): I have never been enamoured of these directive principles. They are just pious hopes and pious wishes laid down there occasionally to create trouble for the provincial Ministries and very seldom the Central Government will be affected by criticisms of this House. Yet article 36 deals with primary education, which article 23 on Fundamental Rights which we have not yet discussed, ignores to provide for. I am not yet satisfied from the speeches what free and compulsory primary education will be like. Will it be in one language, or will it be in two or three languages if a province has two or three kinds of people making up the province?

I will talk of Orissa, where we have some of the Andhra people and some Bengalee people, for whom I think free primary education up to a certain stage should be provided by the State. The same demand I make from the provinces of Madras, Bengal and the Central Provinces, where education in the mother tongue of the Oriyas has been denied. My friend, Premier Shukla, is looking at me. It is not his Ministry's fault. It is a tradition that has grown. No one bothers about giving free primary education in the mother tongue of any race that has a language and a script of its own. In Bengal in the Midnapore district, in the 1881 census, five lakhs of Oriyas existed. In the last census only a few thousands and perhaps in the coming census the will be completely wiped out. But yet primary education gives individuals the chance to be in communion with their God and in communion with the textbooks of their religion. The Oriya children of Midnapore have at present to study Bengali. They have changed their names into Bengali names. So is the case in Madras in the Vizagapatam district where very large numbers of Oriyas live and it was their misfortune that the area could not become part of Orissa Province in 1936. But I do want in bi-lingual areas where there is a large population of another race, the Provincial Ministry and the Government concerned should not deny those children their right of knowledge in their own mother tongue so that when they become literate they may have been able to undertake some study of their religious texts. It is not the policy of this House or the contemplation of this Constitution that every province as it is constituted now should make all the people of one language. That is a problem on which I have had discussions in private. I understand that the Drafting

[Shri B. Das]

Committee will take this up in article 23(1). So that is the reason why I did not move my amendment No. 970 which asked for free and complusory primary education for all children in their respective mother tongue. It is a very primary and essential problem that we should not denationalise those people who have a mother tongue of their own and compel them to learn the mother tongue of someone else, however suitable it may be.

The Honourable Dr. B. R. Ambedkar: Sir, I accept the amendment proposed by my friend, Mr. Maitra, which suggests the deletion of the words "every citizen is entitled to free primary education and". But I am not prepared to accept the amendment of my friend, Mr. Naziruddin Ahmad. He seems to think that the objective of the rest of the clause in article 36 is restricted to free primary education. But that is not so. The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of 14 years. If my honourable Friend, Mr. Naziruddin Ahmad had referred to article 18, which forms part of the fundamental rights, he would have noticed that a provision is made in article 18 to forbid any child being employed below the age of 14. Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of article 36, and that is why I say the word "primary" is quite inappropriate in that particular clause, and I therefore oppose his amendment.

Mr. Vice-President: The question is:

"That in article 36, the words 'Every citizen is entitled to free primary education and' be deleted."

The motion was adopted.

Mr. Vice-President: The question is:

"That in article 36, for the word 'education', the words 'primary education' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That article 36, as amended, stand part of the Constitution."

The motion was adopted.

Article 36, as amended, was added to the Constitution.

Article 35

Mr. Mohamad Ismail Sahib (Madras: Muslim): Sir, I move that the following proviso be added to article 35:

"Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

The right of a group or a community of people to follow and adhere to its own personal law is among the fundamental rights and this provision should really be made amongst the statutory and justiciable fundamental rights. It is for this reason that I along with other friends have given amendments to certain other articles going previous to this which I will move at the proper time.

Now the right to follow personal law is part of the way of life of those people who are following such laws; it is part of their religion and part of their culture. If anything is done affecting the personal laws, it will be tantamount to interference with the way of life of those people who have been observing these laws for generations and ages. This secular State which we are trying to create should not do anything to interfere with the

way of life and religion of the people. The matter of retaining personal law is nothing new; we have precedents in European countries. Yugoslavia, for instance, that is, the kingdom of the Serbs, Croats and Slovenes, is obliged under treaty obligations to guarantee the rights of minorities. The clause regarding rights of Mussulmans reads as follows:

"The Serb, Croat and Slovene State agrees to grant to the Mussulmans in the matter of family law and personal status provisions suitable for regulating these matters in accordance with the Mussulman usage."

We find similar clauses in several other European constitutions also. But these refer to minorities while my amendment refers not to the minorities alone but to all people including the majority community, because it says, "Any group, section or community of people shall not be obliged" etc. Therefore it seeks to secure the rights of all people in regard to their existing personal law.

Again this amendment does not seek to introduce any innovation or bring in a new set of laws for the people, but only wants the maintenance of the personal law already existing among certain sections of people. Now why do people want a uniform civil code, as in article 35? Their idea evidently is to secure harmony through uniformity. But I maintain that for that purpose it is not necessary to regiment the civil law of the people including the personal law. Such regimentation will bring discontent and harmony will be affected. But if people are allowed to follow their own personal law there will be no discontent or dissatisfaction. Every section of the people being free to follow its own personal law will not really come in conflict with others.

Shri Suresh Chandra Majumdar: (West Bengal: General): Sir, on a point of order, what is being said now is a direct negation of article 35 and cannot be taken as an amendment. The Honourable Member can only speak in opposition.

Mr. Mohamed Ismail Sahib: Article 35 reads thus:

"The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India."

That will include the personal law as well.

Mr. Vice-President: I hold that the Honourable Member is in order.

Mr. Mohamed Ismail Sahib: Therefore, Sir, what I submit is that for creating and augmenting harmony in the land it is not necessary to compel people to give up their personal law. I request the Honourable Mover to accept this amendment.

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

"That to article 35, the following proviso be added, namely:—

'Provided that the personal law of any community which has been guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law'."

In moving this, I do not wish to confine my remarks to the inconvenience felt by the Muslim community alone. I would put it on a much broader ground. In fact, each community, each religious community has certain religious laws, certain civil laws inseparably connected with religious beliefs and practices. I believe that in framing a uniform draft code these religious laws or semi-religious laws should be kept out of its way. There are several reasons which underlie this amendment. One of them is that perhaps it clashes with article 19 of the Draft Constitution. In article 19 it is provided that 'subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right

[Mr. Nazirudd'n Ahmad]

freely to profess, practise and propagate religion.' In fact, this is so fundamental that the Drafting Committee has very rightly introduced this in this place. Then in clause (2) of the same article it has been further provided by way of limitation of the right that 'Nothing in this article shall affect the operation of any existing law or preclude the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice'. I can quite see that there may be many pernicious practices which may accompany religious practices and they may be controlled. But there are certain religious practices, certain religious laws which do not come within the exception in clause (2), *viz.* financial, political or other secular activity which may be associated with religious practices. Having guaranteed, and very rightly guaranteed the freedom of religious practice and the freedom to propagate religion, I think the present article tries to undo what has been given in article 19. I submit, Sir, that we must try to prevent this anomaly. In article 19 we enacted a positive provision which is justiciable and which any subject of a State irrespective of his caste and community can take to a Court of law and seek enforcement. On the other hand, by the article under reference we are giving the State some amount of latitude which may enable it to ignore the right conceded. And this right is not justiciable. It recommends to the State certain things and therefore it gives a right to the State. But then the subject has not been given any right under this provision. I submit that the present article is likely to encourage the State to break the guarantees given in article 19.

I submit, Sir, there are certain aspects of the Civil Procedure Code which have already interfered with our personal laws and very rightly so. But during the 175 years of British rule, they did not interfere with certain fundamental personal laws. They have enacted the Registration Act, the Limitation Act, the Civil Procedure Code, the Criminal Procedure Code, the Penal Code, the Evidence Act, the Transfer of Property Act, the Sarda Act and various other Acts. They have been imposed gradually as occasion arose and they were intended to make the laws uniform although they clash with the personal laws of a particular community. But take the case of marriage practice and the laws of inheritance. They have never interfered with them. It will be difficult at this stage of our society to ask the people to give up their ideas of marriage, which are associated with religious institutions in many communities. The laws of inheritance are also supposed to be the result of religious injunctions. I submit that the interference with these matters should be gradual and must progress with the advance of time. I have no doubt that a stage would come when the civil law would be uniform. But then that time has not yet come. We believe that the power that has been given to the State to make the Civil Code uniform is in advance of the time. As it is, any State would be justified under article 35 to interfere with the settled laws of the different communities at once. For instance, there are marriage practices in various communities. If we want to introduce a law that every marriage shall be registered and if not it will not be valid, we can do so under article 35. But would you invalidate a marriage which is valid under the existing law and under the present religious beliefs and practices on the ground that it has not been registered under any new law and thus bastardise the children born?

This is only one instance of how interference can go too far. As I have already submitted, the goal should be towards a uniform civil code but it should be gradual and with the consent of the people concerned. I have therefore in my amendment suggested that religious laws relating to particular communities should not be affected except with their consent to be ascertained in such manner as Parliament may decide by law. Parliament may well decide to ascertain the consent of the community through their representatives, and

this could be secured by the representatives by their election speeches and pledges. In fact, this may be made an article of faith in an election, and a vote on that could be regarded as consent. These are matters of detail. I have attempted by my amendment to leave it to the Central Legislature to decide how to ascertain this consent. I submit, Sir, that this is not a matter of mere idealism. It is a question of stern reality which we must not refuse to face and I believe it will lead to a considerable amount of misunderstanding and resentment amongst the various sections of the country. What the British in 175 years failed to do or was afraid to do, what the Muslims in the course of 500 years refrained from doing, we should not give power to the State to do all at once. I submit, Sir, that we should proceed not in haste but with caution, with experience, with statesmanship and with sympathy.

(B. Pocker Sahib Bahadur rose to speak.)

Mr. Vice-President: When we discuss the clause as a whole, you will get your chance. Amendment No. 960. The Mover has called it a new sub-clause, that is 35-A. We can take it up later on. The article as a whole is now under consideration.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): I have given notice of an amendment to article 35. It is No. 833.

Mr. Vice-President: That escaped my attention. I am glad you pointed that out.

Mahbood Ali Baig Sahib Bahadur: Sir, I move that the following proviso be added to article 35:

"Provided that nothing in this article shall affect the personal law of the citizen."

My view of article 35 is that the words "Civil Code" do not cover the strictly personal law of a citizen. The Civil Code covers laws of this kind: laws of property, transfer of property, law of contract, law of evidence etc. The law as observed by a particular religious community is not covered by article 35. That is my view. Anyhow, in order to clarify the position that article 35 does not affect the personal law of the citizen, I have given notice of this amendment. Now, Sir, if for any reason the framers of this article have got in their minds that the personal law of the citizen is also covered by the expression "Civil Code", I wish to submit that they are overlooking the very important fact of the personal law being so much dear and near to certain religious communities. As far as the Mussalmans are concerned, their laws of succession, inheritance, marriage and divorce are completely dependent upon their religion.

Shri M. Ananthasayanam Ayyangar: It is a matter of contract.

Mahboob Ali Baig Sahib Bahadur: I know that Mr. Ananthasayanam Ayyangar has always very queer ideas about the laws of other communities. It is interpreted as a contract, while the marriage amongst the Hindus is a Samskara and that among Europeans it is a matter of status. I know that very well, but this contract is enjoined on the Mussalmans by the Quran and if it is not followed, a marriage is not a legal marriage at all. For 1350 years this law has been practised by Muslims and recognised by all authorities in all states. If today Mr. Ananthasayanam Ayyangar is going to say that some other method of proving the marraige is going to be introduced, we refuse to abide by it because it is not according to our religion. It is not according to the code that is laid down for us for all times in this matter. Therefore, Sir, it is not a matter to be treated so lightly. I know that in the case of some other communities also, their personal law depends entirely upon their religious tenets. If some communities have got their own way of dealing with their religious tenets and practices, that cannot be imposed on a community which insists that their religious tenets should be observed.

Shri L. Krishnaswami Bharathi: It is sought to be done only by consent of all concerned.

Mr. Vice-President: Mr. Bharathi, the majority community has always been so very indulgent that I would ask you as a personal favour to give the fullest possible freedom to our Muslim brethren to express their views. I would ask you to exercise patience for a little while. I know they feel very strongly on this matter.

Shri L. Krishnaswami Bharathi: My point was, Sir, that it was not an attempt at imposition. If anything is done, it will be done only with the consent of all concerned, and the Honourable Member need not labour that point.

Mr. Vice-President: It is understood and I thank you for it.

Mahboob Ali Baig Sahib Bahadur: Now, Sir, people seem to have very strange ideas about secular State. People seem to think that under a secular State, there must be a common law observed by its citizens in all matters, including matters of their daily life, their language, their culture, their personal laws. That is not the correct way to look at this secular State. In a secular State, citizens belonging to different communities must have the freedom to practice their own religion, observe their own life and their personal laws should be applied to them. Therefore, I hope the framers of this article have not in their minds the personal law of the people to cover the words "Civil code". With this observation, I move that that it may be made clear by this proviso, lest an interpretation may be given to it that these words "civil code" include personal law of any community.

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, I support the motion which has already been moved by Mr. Mohamed Ismail Sahib to the effect that the following proviso be added to article 35:—

"Provide that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

It is a very moderate and reasonable amendment to this article 35. Now I would request the House to consider this amendment not from the point of view of the Mussalman community alone, but from the point of view of the various communities that exist in this country, following various codes of law, with reference to inheritance, marriage, succession, divorce, endowments and so many other matters. The House will note that one of the reasons why the Britisher, having conquered this country, has been able to carry on the administration of this country for the last 150 years and over was that he gave a guarantee of following their own personal laws to each of the various communities in the country. That is one of the secrets of success and the basis of the administration of justice on which even the foreign rule was based. I ask, Sir, whether by the freedom we have obtained for this country, are we going to give up that freedom of conscience and that freedom of religious practices and that freedom of following one's own personal law and try or aspire to impose upon the whole country one code of civil law, whatever it may mean,—which I say, as it is, may include even all branches of civil law, namely, the law of marriage, law of inheritance, law of divorce and so many other kindred matters?

In the first place, I would like to know the real intention with which this clause has been introduced. If the words "Civil Code" are intended only to apply to matters of procedure like the Civil Procedure Code and such other laws which are uniform so far as India is concerned at present well, nobody has any objection to that, but the various civil Courts Acts in the various provinces in this country have secured for each community the right to follow their personal laws as regards marriage, inheritance, divorce, etc. But if it is intended that the aspiration of the State should be to override all these provisions and to have uniformity of law to be imposed upon the whole people on these matters which are dealt with by the Civil Courts Acts in the various provinces, well, I would only say, Sir, that it is a tyrannous provision which ought not to be tolerated; and let it not be taken that I am only voicing forth the feelings of the Mussalmans. In saying this, I am voicing forth the feelings of ever so

many sections in this country who feel that it would be really tyrannous to interfere with the religious practices, and with the religious laws, by which they are governed now.

Now, Sir, just like many of you, I have received ever so many pamphlets which voice forth the feelings of the people in these matters. I am referring to many pamphlets which I have received from organisations other than Mussalmans, from organisations of the Hindus, who characterize such interference as most tyrannous. They even question, Sir, the right and the authority of this body to interfere with their rights from the constitutional point of view. They ask: Who are the members of this Constituent Assembly who are contemplating to interfere with the religious rights and practices? Were they returned there on the issue as to whether they have got this right or not? Have they been returned by the various legislatures, the elections to which were fought out on these issues?

If such a body as this interferes with the religious rights and practices, it will be tyrannous. These organisations have used a much stronger language than I am using, Sir. Therefore, I would request the Assembly not to consider what I have said entirely as coming from the point of view of the Muslim community. I know there are great differecnes in the law of inheritance and various other matters between the various sections of the Hindu community. Is this Assembly going to set aside all these differences and make them uniform? By uniform, I ask, what do you mean and which particular law, of which community are you going to take as the standard? What have you got in your mind in enacting a clause like this? There are the Mitakshara and Dayabaga systems; there are so many other systems followed by various other communities. What is it that you are making the basis? Is it open to us to do anything of this sort? By this one clause you are revolutionising the whole country and the whole setup. There is no need for it.

Sir, as already pointed out by one of my predecessors in speaking on this motion, this is entirely antagonistic to the provision made as regards Fundamental Rights in article 19. If it is antagonistic, what is the purpose served by a clause like this? Is it open to this Assembly to pass by one stroke of the pen an article by which the whole country is revolutionised? Is it intended? I do not know what the framers of this article mean by this. On a matter of such grave importance, I am very sorry to find that the framers or the draftsmen of this article have not bestowed sufficiently serious attention to that. Whether it is copied from anywhere or not, I do not know. Anyhow, if it is copied from anywhere, I must condemn that provision even in that Constitution. It is very easy to copy sections from other constitutions of countries where the circumstances are entirely different. There are ever so many multitudes of communities following various customs for centuries or thousands of years. By one stroke of the pen you want to annul all that and make them uniform. What is the purpose served? What is the purpose served by this uniformity except to murder the consciences of the people and make them feel that they are being trampled upon as regards their religious rights and practices? Such a tyrannous measure ought not to find a place in our Constitution. I submit, Sir, there are ever so many sections of the Hindu community who are rebelling against this and who voice forth their feelings in much stronger language than I am using. If the framers of this article say that even the majority community is uniform in support of this, I would challenge them to say so. It is not so. Even assuming that the majority community is of this view, I say, it has to be condemned and it ought not to be allowed, because, in a democracy, as I take it, it is the duty of the majority to secure the sacred rights of every minority. It is a misnomer to call it a democracy if the majority rides rough-shod over the rights of the minorities. It is not democracy at all; it is tyranny. Therefore, I would submit to

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you and all the Members of this House to take very serious notice of this article; it is not a light thing to be passed like this.

In this connection, Sir, I would submit that I have given notice of an amendment to the Fundamental Right article also. This is only a Directive Principle.

Mr. Vice-President: That may be taken up at the proper time.

B. Pocker Sahib Bahadur: What I would submit is only this. The result of any voting on this should not be allowed to affect the fate of that amendment.

Mr. Hussain Imam: (Bihar: Muslim): Mr. Vice-President, Sir, India is too big a country with a large population so diversified that it is almost impossible to stamp them with one kind of anything. In the north, we have got extreme cold; in the south we have extreme heat. In Assam we have got more rains than anywhere else in the world; about 400 inches; just near up in the Rajputana desert, we have no rains. In a country so diverse, is it possible to have uniformity of civil law? We have ourselves further on provided for concurrent jurisdiction to the provinces as well as to the Centre in matters of succession, marriage, divorce and other things. How is it possible to have uniformity when there are eleven or twelve legislative bodies ready to legislate on a subject according to the requirements of their own people and their own circumstances. Look at the protection we have given to the backward classes. Their property is safeguarded in a manner in which other property is not safeguarded. In the Scheduled areas,—I know of Jharkhand and Santhal Parganas—we have given special protection to the aboriginal population. There are certain circumstances which demand diversity in the civil laws. I therefore, feel, Sir, that, in addition to the arguments which have been put forward by my friends who spoke before me, in which they feel apprehensive that their personal law will not be safe if this Directive is passed, I suggest that there are other difficulties also which are purely constitutional, depending not so much on the existence of different communities, as on the existence of different levels in the intelligence and equipment of the people of India. You have to deal not with an uniformly developed country. Parts of the country are very very backward. Look at the Assam tribes; what is their condition? Can you have the same kind of law for them as you have for the advanced people of Bombay? You must have a great deal of difference. Sir, I feel that it is all right and a very desirable thing to have a uniform law, but at a very distant date. For that, we should first await the coming of that event when the whole of India has got educated, when mass illiteracy has been removed, when people have advanced, when their economic conditions are better, when each man is able to stand on his own legs and fight his own battles. Then, you can have uniform laws. Can you have, today, uniform laws as far as a child and a young man are concerned?

Even today under the Criminal law you give juvenile offenders a lighter punishment than you do to adult offenders. The apprehension felt by the members of the minority community is very real. Secular State does not mean that it is anti-religious State. It means that it is not irreligious but non-religious and as such there is a world of difference between irreligious and non-religious. I therefore suggest that it would be a good policy for the members of the Drafting Committee to come forward with such safeguards in this proviso as will meet the apprehensions genuinely felt and which people are feeling and I have every hope that the ingenuity of Dr. Ambedkar will be able to find a solution for this

Shri K. M. Munshi (Bombay: General): Mr. Vice-President, I beg to submit a few considerations. This particular clause which is now before the House is not brought for discussion for the first time. It has been discussed in several committees and at several places before it came to the House. The

ground that is now put forward against it is, firstly that it infringes the Fundamental Right mentioned in article 19; and secondly, it is tyrannous to the minority.

As regards article 19 the House accepted it and made it quite clear that—"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law (a) regulating or restricting" —I am omitting the unnecessary words—"or other secular activity which may be associated with religious practices; (b) for social welfare and reforms". Therefore the House has already accepted the principle that if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare, it would be open to Parliament to make laws about it without infringing this Fundamental Right of a minority.

It must also be remembered that if this clause is not put in, it does not mean that the Parliament in future would have no right to enact a Civil Code. The only restriction to such a right would be article 19 and I have already pointed out that article 19, accepted by the House unanimously, permits legislation covering secular activities. The whole object of this article is that as and when the Parliament thinks proper or rather when the majority in the Parliament thinks proper an attempt may be made to unify the personal law of the country.

A further argument has been advanced that the enactment of a Civil Code would be tyrannical to minorities. Is it tyrannical? Nowhere in advanced Muslim countries the personal law of each minority has been recognised as so sacrosanct as to prevent the enactment of a Civil Code. Take for instance Turkey or Egypt. No minority in these countries is permitted to have such rights. But I go further. When the Shariat Act was passed or when certain laws were passed in the Central Legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied.

They then followed certain Hindu customs; for generations since they became converts they had done so. They did not want to conform to the Shariat; and yet by a legislation of the Central Legislature certain Muslim members who felt that Shariat law should be enforced upon the whole community carried their point. The Khojas and Cutchi Memons most unwillingly had to submit to it. Where were the rights of minority then? When you want to consolidate a community, you have to take into consideration the benefit which may accrue to the whole community and not to the customs of a part of it. It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not felt to be tyrannical to the minority. The point however is this, whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What have these things got to do with religion I really fail to understand. Take for instance the Hindu Law Draft which is before the Legislative Assembly. If one looks at Manu and Yagnyavalkya and all the rest of them, I think most of the provisions of the new Bill will run counter to their injunctions. But after all we are an advancing society. We are in a stage where we must unify and consolidate the nation by every means without interfering with religious practices. If however the religious practices in the past have been so construed as to cover the whole field of life, we have reached a point when we must put our foot down and say that these matters are not religion, they are purely matters for secular legislation. This is what is emphasised by this article.

[Shri K. M. Munshi]

Now look at the disadvantages that you will perpetuate if there is no Civil Code. Take for instance the Hindus. We have the law of Mayukha applying in some parts of India; we have Mithakshara in others; and we have the law-Dayabagha in Bengal. In this way even the Hindus themselves have separate laws and most of our Provinces and States have started making separate Hindu law for themselves. Are we going to permit this piecemeal legislation on the ground that it affects the personal law of the country? It is therefore not merely a question for minorities but it also affects the majority.

I know there are many among Hindus who do not like a uniform Civil Code, because they take the same view as the honourable Muslim Members who spoke last. They feel that the personal law of inheritance, succession etc. is really a part of their religion. If that were so, you can never give, for instance, equality to women. But you have already passed a Fundamental Right to that effect and you have an article here which lays down that there should be no discrimination against sex. Look at Hindu Law; you get any amount of discrimination against women; and if that is part of Hindu religion or Hindu religious practice, you cannot pass a single law which would elevate the position of Hindu women to that of men. Therefore, there is no reason why there should not be a civil code throughout the territory of India.

There is one important consideration which we have to bear in mind—and I want my Muslim friends to realise this—that the sooner we forget this isolationist outlook on life, it will be better for the country. Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible, a strong and consolidated nation. Our first problem and the most important problem is to produce national unity in this country. We think we have got national unity. But there are many factors—and important factors—which still offer serious dangers to our national consolidation, and it is very necessary that the whole of our life, so far as it is restricted to secular spheres, must be unified in such a way that as early as possible, we may be able to say, "Well, we are not merely a nation because we say so, but also in effect, by the way we live, by our personal law, we are a strong and consolidated nation". From that point of view alone, I submit, the opposition is not, if I may say so, very well advised. I hope our friends will not feel that this is an attempt to exercise tyranny over a minority; it is much more tyrannous to the majority.

This attitude of mind perpetuated under the British rule, that personal law is part of religion, has been fostered by the British and by British courts. We must, therefore, outgrow it. If I may just remind the honourable Member who spoke last of a particular incident from Fereshta which comes to my mind, Allauddin Khilji made several changes which offended against the Shariat, though he was the first ruler to establish Muslim Sultanate here. The Kazi of Delhi objected to some of his reforms, and his reply was—"I am an ignorant man and I am ruling this country in its best interests. I am sure, looking at my ignorance and my good intentions, the Almighty will forgive me, when he finds that I have not acted according to the Shariat." If Allauddin could not, much less can a modern government accept the proposition that religious rights cover personal law or several other matters which we have been unfortunately trained to consider as part of our religion. That is my submission.

Shri Alladi Krishanaswami Ayyar (Madras: General): Mr. Vice-President, after the very full exposition of my friend the Honourable Mr. Munshi, it is not necessary to cover the whole ground. But it is as well to understand whether there can be any real objection to the article as it runs.

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

A Civil Code, as has been pointed out, runs into every department of civil relations, to the law of contracts, to the law of property, to the law of succession, to the law of marriage and similar matters. How can there be any objection to the general statement here that the States shall endeavour to secure a uniform civil code throughout the territory of India?

The second objection was that religion was in danger, that communities cannot live in amity if there is to be a uniform civil code. The article actually aims at amity. It does not destroy amity. The idea is that differential systems of inheritance and other matters are some of the factors which contribute to the differences among the different peoples of India. What it aims at is to try to arrive at a common measure of agreement in regard to these matters. It is not as if one legal system is not influencing or being influenced by another legal system. In very many matters today the sponsors of the Hindu Code have taken a lead not from Hindu Law alone, but from other systems also. Similarly, the Succession Act has drawn upon both the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely, we want the whole of India to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation, or is this country to be kept up always as a series of competing communities? That is the question at issue.

Now, my friend Mr. Pocker levelled an attack against the Drafting Committee on the ground that they did not know their business. I should like to know whether he has carefully read what happened even in the British regime. You must know that the Muslim law covers the field of contracts, the field of criminal law, the field of divorce law, the field of marriage and every part of law as contained in the Muslim law. When the British occupied this country, they said, we are going to introduce one criminal law in this country which will be applicable to all citizens, be they Englishmen, be they Hindus, be they Muslims. Did the Muslims take exception, and did they revolt against the British for introducing a single system of criminal law? Similarly we have the law of contracts governing transactions between Muslims and Hindus, between Muslims and Muslims. They are governed not by the law of the Koran but by the Anglo-Indian jurisprudence, yet no exception was taken to that. Again, there are various principles in the law of transfer which have been borrowed from the English jurisprudence.

Therefore, when there is impact between two civilizations or between two cultures, each culture must be influenced and influence the other culture. If there is a determined opposition, or if there is strong opposition by any section of the community, it would be unwise on the part of the legislators of this country to attempt to ignore it. Today, even without article 35, there is nothing to prevent the future Parliament of India from passing such laws. Therefore, the idea is to have a uniform civil code.

Now, again, there are Muslims and there are Hindus, there are Catholics, there are Chistians, there are Jews, in different European countries. I should like to know from Mr. Pocker whether different personal laws are perpetuated in France, in Germany, in Italy and in all the continental countries of Europe, or whether the laws of succession are not co-ordinated and unified in the various

[Shri Alladi Krishnaswami Ayyar]

States. He must have made a detailed study of Muslim jurisprudence and found out whether in all those countries, there is a single system of law or different systems of law.

Leave alone people who are there. Today, even in regard to people in other parts of the country, if they have property in the continent of Europe where the German Civil Code or the French Civil Code obtains, the people are governed by the law of the place in very many respects. Therefore, it is incorrect to say that we are invading the domain of religion. Under the Moslem law, unlike under Hindu law, marriage is purely a civil contract. The idea of a sacrament does not enter into the concept of marriage in Muslim jurisprudence though the incidence of the contract may be governed by what is laid down in the Koran and by the later jurists. Therefore, there is no question of religion being in danger. Certainly no Parliament, no Legislature will be so unwise as to attempt it, apart from the power of the Legislature to interfere with religious tenets of peoples. After all the only community that is willing to adapt itself to changing times seems to be the majority community in the country. They are willing to take lessons from the minority and adapt their Hindu Laws and take a leaf from the Muslims for the purpose of reforming even the Hindu Law. Therefore, there is no force to the objection that is put forward to article 35. The future Legislatures may attempt a uniform Civil Code or they may not. The uniform Civil Code will run into every aspect of Civil Law. In regard to contracts, procedure and property uniformity is sought to be secured by their finding a place in the Concurrent List. In respect of these matters the greatest contribution of British jurisprudence has been to bring about a uniformity in these matters. We only go a step further than the British who ruled in this country. Why should you distrust much more a national indigenous Government than a foreign Government which has been ruling? Why should our Muslim friends have greater confidence, greater faith in the British rule than in a democratic rule which will certainly have regard to the religious tenets and beliefs of all people?

Therefore, for those reasons, I submit that the House may unanimously pass this article which has been placed before the Members after due consideration.

The Honourable Dr. B. R. Ambedkar: Sir, I am afraid I cannot accept the amendments which have been moved to this article. In dealing with this matter, I do not propose to touch on the merits of the question as to whether this country should have a Civil Code or it should not. That is a matter which I think has been dealt with sufficiently for the occasion by my friend, Mr. Munshi, as well as by Shri Alladi Krishnaswami Ayyar. When the amendments to certain fundamental rights are moved, it would be possible for me to make a full statement on this subject, and I therefore do not propose to deal with it here.

My friend, Mr. Hussain Imam, in rising to support the amendments, asked whether it was possible and desirable to have a uniform Code of laws for a country so vast as this is. Now I must confess that I was very much surprised at that statement, for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts: and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not

been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it.

Coming to the amendments, there are only two observations which I would like to make. My first observation would be to state that members who put forth these amendments say that the Muslim personal law, so far as this country was concerned, was immutable and uniform through the whole of India. Now I wish to challenge that statement. I think most of my friends who have spoken on this amendment have quite forgotten that up to 1935 the North-West Frontier Province was not subject to the Shariat Law. It followed the Hindu Law in the matter of succession and in other matters, so much so that it was in 1939 that the Central Legislature had to come into the field and to abrogate the application of the Hindu Law to the Muslims of the North-West Frontier Province and to apply the Shariat Law to them. That is not all.

My honourable friends have forgotten, that, apart from the North-West Frontier Province, up till 1937 in the rest of India, in various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu Law in the matter of succession. In order to bring them on the plane of uniformity with regard to the other Muslims who observed the Shariat Law, the Legislature had to intervene in 1937 and to pass an enactment applying the Shariat Law to the rest of India.

I am also informed by my friend, Shri Karunakara Menon, that in North Malabar the Marumakkathayam Law applied to all—not only to Hindus but also to Muslims. It is to be remembered that the Marumakkathayam Law is a Matriarchal form of law and not a Partriarchal form of law.

The Mussulmans, therefore, in North Malabar were up to now following the Marumakkathayam law. It is therefore no use making a categorical statement that the Muslim law has been an immutable law which they have been following from ancient times. That law as such was not applicable in certain parts and it has been made applicable ten years ago. Therefore if it was found necessary that for the purpose of evolving a single civil code applicable to all citizens irrespective of their religion, certain portions of the Hindu law, not because they were contained in Hindu law but because they were found to be the most suitable, were incorporated into the new civil code projected by article 35, I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community.

My second observation is to give them an assurance. I quite realise their feelings in the matter, but I think they have read rather too much into article 35, which merely proposes that the State shall endeavour to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method. This is not a novel method. It was adopted in the Shariat Act of 1937 when it was applied to territories other than the North-West Frontier Province. The law said that here is a Shariat law which should be applied to Mussulmans provided a Mussulman who wanted that he should be bound by the Shariat Act should go to an officer of the state, make a declaration that he is willing to be bound by it, and after he has made that declaration the

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law will bind him and his successors. It would be perfectly possible for parliament to introduce a provision of that sort; so that the fear which my friends have expressed here will be altogether nullified. I therefore submit that there is no substance in these amendments and I oppose them.

Mr. Vice-President: The question is:

"That the following proviso be added to article 35:

'Provided that any group, section or community or people shall not be obliged to give up its own personal law in case it has such a law'."

The motion was negatived.

Mr. Vice-President: The question is:

"That to article 35, the following proviso be added, namely,

'Provided that the personal law of any community which is guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law'."

The motion was negatived.

Mr. Vice-President: The question is:

"That Part IV of the Draft Constitution be deleted."

The motion was negatived.

Mr. Vice-President: The question is:

"That article 35, stand part of the Constitution."

The motion was adopted.

Article 35 was added to the Constitution.

Article 37

Sardar Hukum Singh (East Punjab: Sikh): Mr. Vice-President, I move:

"That in article 37, for the words 'Scheduled Castes' the words 'Backward communities of whatever class or religion' be substituted."

Sir, "Scheduled Castes" has been defined in article 303 (w) of this Draft Constitution as castes and races specified in the Government of India (Scheduled Castes) Order 1936. In that Order, most of the tribes, castes and subcastes are described and include Bawaria, Chamar, Chuhra, Balmiki, Od, Sansi, Sirviband and Ramdasis. It would be conceded that they have different faiths and beliefs. For instance, there are considerable numbers of Sikh Ramdasis, Odes, Balmiki and Chamars. They are as the backward as their brethren of other beliefs. But, so far, these Sikh backward classes have been kept out of the benefits meant for Scheduled Castes. The result has been either conversion in large numbers or discontent.

I do realise that so far as election to legislatures was concerned, there could be some justification as the Sikhs had separate representation and the Scheduled Castes got their reservation out of General Seats. There is the famous case of S. Gopal Singh Khalsa who could not be allowed to contest a seat unless he declared that he was not a Sikh. Such cases have led to disappointment and discontent on account of a general belief that some sections were being discriminated against.

Now the underlying idea is the uplift of the backward section of the community so that they may be able to make equal contribution in the national activities. I fully support the idea. I may be confronted with an argument that at least there is the first part of the article which provides for promotion "of educational and economic interests of 'weaker sections' of the people". So far it is quite good and it can apply to every class. But, as the "weaker sections" are not defined anywhere, the apprehension is that the whole attention would be directed to the latter part relating to 'Scheduled Castes' and 'weaker sections'

would not mean anything at all. Even the article lays the whole stress on this latter portion by centralising attention through the words 'in particular' of the 'Scheduled Castes'.

I may not be misunderstood in this respect. I do not grudge this special care of the State being directed towards "Scheduled Castes". Rather, I would support even greater concessions being given and more attention being paid to backward classes. My only object is that there should be no discrimination. That is not the intention of the article either. But, as I have said, so far the "Scheduled Castes" have been understood by general masses to exclude the members of the same castes professing Sikh religion. We should be particular in guaranteeing against any misconstruction being placed or any discrimination being exercised by those who would be responsible for actual working of it. Under the present article, it is the "educational and economic interests" that are to be promoted and therefore it should be made clear that it is to be done for all backward classes, and not for persons professing this or that particular religion or belief. I commend this motion for the acceptance of the House.

Shri A. V. Thakkar (United States of Kathiawar: Saurashtra): Sir, I beg to move this amendment (983) which asks for the inclusion of the backward castes among Hindus and among Muslims.....

The Honourable Dr. B. R. Ambedkar: May I just make a statement? I believe both these amendments dealing with the backward classes, etc. would be more appropriate to the Schedule and could be better considered when we dealt with the Schedule. I would suggest that the consideration of these amendments may be postponed.

Shri A. V. Thakkar: My amendment seeks to lay down certain principles.....

Mr. Vice-President: Dr. Ambedkar proposes to give the fullest possible consideration to these in the Schedule.

Shri A. V. Thakkar: Does he agree to include all backward classes?

Mr. Vice-President: He can hardly agree to anything now. The matter is open to discussion later.

Shri A. V. Thakkar: Then I do not move my amendment now.

Mr. Naziruddin Ahmad: Sir, I am not moving my amendment No. 985. It merely seeks to use capital letters in the case of the Scheduled Castes. I would respectfully draw the attention of the Chairman of the Drafting Committee to article 303 (1), items (w) and (x) on page 147 of the Draft Constitution. We have there specified two definitions, 'Scheduled Castes' and 'Scheduled Tribes'. 'Scheduled Castes' have everywhere been spelt with capital letters, but 'Scheduled tribes' have been spelt with small letters.

The Honourable Dr. B. R. Ambedkar: We shall consider that.

Sardar Hukam Singh: I beg leave to withdraw my amendment.

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

Mr. Vice-President: I shall now put article 37 to the vote of the House.

The question is:

"That article 37 do stand part of the Constitution."

The motion was adopted.

Article 37 was added to the Constitution.

Article 38

Mr. Vice-President: The House will now take up article 38 for consideration.

Shri Mahavir Tyagi: Sir, in connection with my amendment No. 999, I have given notice of another amendment (71 in List II) after consulting some of my friends. I hope Mr. Aziz Ahmed Khan who has his own amendment to this article will agree with my amendment. I do not want to make any speech in moving this amendment. Everybody appreciates the value of prohibition. Hence I simply move amendment No. 71 in List II:

"That at the end of article 38, the words 'and shall endeavour to bring about the prohibition of the consumption of intoxicating drinks and drugs which are injurious to health' be inserted."

Sir, for this attempt of mine I am conscious of the abuses that will be hurled on me by the dry mouths of those who have to stop drinking. I am also aware of the blessings that will be showered on me by the wives of those who will benefit by the removal of this evil. I should only wish "good luck" to the country in case this amendment is accepted.

An Honourable Member: It is already past 1 o'clock.

Mr. Vice-President: Somebody is surely to blame. Here in this time-piece it is one minute to one.

The House stands adjourned till 10 A.M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 24th November 1948.

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request to the members of the Congress is, you must try to see which pledges should come first. You have to see first of all how you are going to make the lot of the teeming millions of India economically and in several other respects better.

The third argument put forth has been the success of prohibition in Madras. How, Sir, is this success measured I want to know. Is it measured in terms merely because there is prohibition? You have a number of people who go on still indulging in drinks and go on filling the innumerable jails. Have you also measured as a result of the squandering of several crores of Rupees, what you have failed to do? Have you tried to measure the success of prohibition in Madras from that point of view?

The next argument put forth was that all communities want it. Parsis and Christians also were included in that list. Sir, I happen to know Parsis and Christians a little bit and I think, Sir, definitely they are not in favour of prohibition.

Then, the last and perhaps the most difficult argument for me to answer is that Gandhiji has been always for prohibition. Let me make it very clear to this House that I am second to none in my admiration, respect and veneration for Gandhiji. Gandhiji is the father of the Nation; he is the father of all of us. But, Sir, I want to say something. It was stated here, might be perhaps a little frivolously, that where liquor is, Gandhiji is not; where Gandhiji is, liquor is not. In other words, Gandhiji shuns sinners, presuming that liquor drinking is a sin. Gandhiji read, studied, I dare say, loved the Gita, and as a student of the Gita, he had, what I may say, attained *Sama Drishti*. He did not make any distinction between a sinner and a saint. Gandhiji was a saint first, a politician afterwards. I want you to consider, Sir, I make bold myself to ask you, what do you think is the essence of Gandhism? The essence of Gandhism is love, toleration; its essence is non-violence, search for truth and all these important things. The externals of Gandhism or the outward trappings of Gandhism are Khaddar and prohibition. Unfortunately, the followers of Gandhiji, some of them, have been giving more importance to the outward trappings of Gandhism than to the essence of it. Gandhiji's conception of truth was that though truth is one, every individual is to have his own approach to truth, and every individual had to see it for himself. Therefore, this is what Gandhiji said, what Gandhiji wanted. If we merely follow blindly, the good father that he is, he will really be sorry, though he has departed,—he has left even this House full of lisping babes, who merely do discredit to the Father,—for not having taught them to think individually and rationally. Then, Sir, are we going to say: merely because it is the father's word, as the saying goes, *Baba Vakyam Pramanam*, is that going to be the philosophy of life? We are living in an age, when, in spite of the fact that there are several defects in it, there is one very important thing about the twentieth Century. This is an age of interrogation. The young men of today want to throw a challenge and find out the truth for themselves. As Flaker has said, "Even if God were to burn with hell and fire, I would still ask Him till He answers me why;" I would not follow blindly even if God were to tell me to do so. We are not to be dumb driven cattle; We are to be heroes in this strife. Sir, George Bernard Shaw has said much the same thing. 'examine, test and then accept'. If you are fond of Sanskrit literature, Kalidasa says more or less the same thing:

सन्तः परीक्षयान्य तरत् भजन्ते मूढः परप्रत्ययनेय बुद्धिः।

From answering arguments, let me go to the positive side of my speech. On the practical side, I say prohibition should be made to wait, and wait for long in this unfortunate land of ours which has become fortunate only the other day. On the practical side, Sir, I may quote one great thinker who says that there are

[Shri B. H. Khardekar]

two important fronts in life, first there is the war front, and then there is the front of education. When we will have war, God alone knows; we may have a major war at any time and we must be prepared for that. There is some trouble in Kashmir; there was some in Hyderabad. We have got to be prepared. It must also be remembered that we are a very poor country and we must gather up all the resources that we have, so that we can attend to first things first. In a country where democracy has to flourish, where democracy is in its infancy, the front of education is the most important one. You know the appalling condition of the people so far as education is concerned. About sixty to seventy years ago, in several countries free and compulsory primary education was introduced. As a result of freedom, that should be our first business. Only yesterday, we discussed the necessity of having such a clause in the Draft Constitution. In a country like ours, even free compulsory primary education would not be enough, because the poor boy, who goes to plough, forgets even to put his signature after a few years, and so, in proportion, even secondary education for the backward communities, rather I may say for the poor would have to be provided. Sir, we are an infant democracy and if we are going to have really a democratic Government, we must have education. You know the great saying, "Democracy without education is hypocrisy without limitation" and we do not want to have such a Government where only a few who know will govern ultimately and we will have a Fascist Government; and if we are going to insist too much to-day on prohibition, we are going to deprive a number of our good children from receiving proper education and the result would be whereas we aim at establishing a secular democratic State, we are really going to have a religious fascist Government and nothing short of it. I am giving you, Sir, a warning.

Then apart from education, there is a thing like medical health and public health. Most of you are very honest and sincere workers and you have been to villages. Even during my occasional visits I find that the poor villager has absolutely no medical help. There are thousands of lepers who require medical help and if all that tremendous help is to be given, from where is the money to come forth? Therefore, we must have first things first and our great enemy is poverty and unless we pool our resources and put first things first, unless we develop a sense of values, I think we will be in a mess.

Now curiously enough I want to talk to you, Sir, a little about the moral side of prohibition or against it. I recommend to you very strongly a remarkable Chapter in Harold Laski's 'Liberty in the Modern State' which he has devoted against prohibition. I could not get the book, so I cannot quote from it but his main point is that prohibition goes against the very grain of personal liberty. In a free India, Sir, the development of personality to its fullest extent is our aim and by frustrations, prohibition, inhibitions, suppressions we are going to have a stunted growth in the youngmen. It does not mean that we should encourage them to drink but they will find their mistakes and ultimately liberty—I don't mean by liberty license—would be of considerable use. Then Sir, consider—I am not going to be frivolous here—but consider the shock given to social life,—club life will come to an end—and I may tell you just compare the two things—some friends having discussion may be in the evening or night quite seriously over a glass of butter-milk and as against that an innocent but intellectual discussion over a glass of wine or even beer. The Greeks had it. True philosophers know how to enjoy both the worlds and the foundations of philosophy and science were laid by the Great Greeks. They did not have taboos and suppressions and inhibitions. The real development of personality comes through that. If you were to compare the life in a city like Bombay on dry days and wet days, Sir, on dry days you will find life really dry and dull. I ask

you to see that. You might think this is all for the rich. Everybody that goes to club is not rich but what about the poor? Think of the millions of mill hands working very hard all day. In the evening they like to have a glass or two of toddy which is really nothing but fermented neera and if along with the vitamins he gets a little mirth or joy, why should you deprive him of that? Sir, I would request you to consider the solace and the little comfort that he gets. There are some among us—men like Dr. Ambedkar getting great solace in reading. There are others who like to read novels and enjoy them. There are those who like to play the piano and there are some who would like to have a glass of wine or beer. Now I may draw some distinction here because most of you, I beg to say, would not be knowing how many people after all do drink. I would request the economists and the statisticians to find it but I dare say the figure is not more than 10 per cent and most of you are ignorant of a very important fact that you do not know the essential difference between drinkers and drunkards. Of the 10 per cent. that drink not 9 per cent are drunkards. They just drink a glass or two with friends and the 1 per cent that consists of drunkards are hopeless people due to very bad circumstances—there might be innumerable reasons—if you deprive them of drink by law, they will resort to illicit distillation. If even that is not allowed, if your machinery is perfect—but I dare say our machinery is inclined towards bribery and corruption and this will be one more handle for them—but apart from that even if you deprive them of that, they will indulge in drinking poisonous stuff and meet their end even earlier. So, for this 1 per cent of the human population are you going to throw so much of valuable wealth, tons and tons of rupees into the Arabian Sea merely because there is a sort of religious inkling behind.. You may have that religious idea that it is impious to drink. Well, Gods were supposed or they are supposed to indulge in Sura. The human beings may indulge in Madira. What harm is there? Then, I may point out that after all if one really does not have bad effects from it, why should we deprive them? Let us consider what India really requires. Now, having prohibition and being very pious are very good and these are very highly developed qualities which even the civilised nations have not been able to bring into practice. We, Sir, lack even common decency and honesty. The Prime Minister of India Pandit Jawaharlal Nehru, the most beloved and most respected, loses a pair of shoes. In European countries the least respected leader would not lose a pair of shoes, if he attends a function. So there is this difference that essential qualities, basic qualities like honesty etc. we must have first. You are a party in majority and you can decide what you like. I don't mean you should stop bringing prohibition but wait for some time—and I may qucte the Editor of the *Times of India* and say that there are things other than liquor that go to the head and power is one. Let not the majority party suffer from it.

Shri Jaipal Singh (Bihar: General): Mr. President, Sir, I do not know whether I shall be in order in suggesting to you that this amendment be postponed until such time as we come to the consideration of the recommendations that the Advisory Committee has made particularly in regard to the Tribal Areas. Now, the recommendations of the Advisory Committee as well as the Sub-Committees have not been given a chance for full discussion on the floor of this House. Therefore, I do not at this stage, want to go into details but I am bound to oppose the Resolution and amendments of this sort. We have heard such a lot of pious language about a democratic State, of a secular State, of our being voluntarily opposed to the establishment of theocracy in India. Here, Sir, I submit, by the backdoor we are trying to interfere with the religious rights of the most ancient people of this country. You may laugh. Excess in everything is wrong. If you eat too much rice, it is bad for you. There are so many other things that you take in excess. But, if you take anything in its right quantity, it is good for you. Drink certainly is one of the things taken in excess which does no one good, but, let us remember that we should

[Shri Jaipal Singh]

not be hasty in putting into the Constitution anything which is going to work for more bitterness than there is already. During our discussions in the Advisory Committee, Maulana Abul Kalam Azad was pleased to put a direct question to me and it was this—"*Kya yah mazhabi chij hai*". Is it really a religious right? On that occasion, the Chairman of the Advisory Committee, the Honourable Sardar Patel, gave me an opportunity to explain what the position was. Now, as far as the Adibasis are concerned, no religious function can be performed without the use of rice beer. The word here used—the phrase used is 'intoxicating drinks'. Sir, that is a very vague way of describing the thing, and, also 'injurious to health'. My friend Prof. Shibban Lal has tried to put forward the argument of economic efficiency. He thinks that if prohibition were installed in this country, the economic efficiency of the workers would be enhanced. I dare say it would be. But what I want to tell him is that it is not merely the industrial workers whom he has particularly in ruind, that are affected. I would like to point out to him the position of the very poor people, the Adibasis, and, members who come from West Bengal and other places will bear me out in what I say about the Adibasis who are in such large numbers in West Bengal, Southern Bihar, Orissa and other places. In West Bengal, for instance, it would be impossible for paddy to be transplanted if the Santhal does not get his rice beer. These ill-clad men, without even their barest wants satisfied, have to work knee-deep in water throughout the day, in drenching rain and in mud. What is it in the rice beer that keeps them alive? I wish the medical authorities in this country would carry out research in their laboratories to find out what it is that the rice beer contains, of which the Adibasis need so much and which keeps them against all manner of diseases.

Well, Sir, I am not opposing this amendment because I want drink to increase in this country. I am all for seeing to it, and, seeing vigorously to it, that the Adibasis do not injure themselves by this drink habit. But that is quite apart from the religious needs and religious privileges; we shall educate them to lead a life of temperance. I am all for that. But this amendment is a vicious one. It seeks to interfere with my religious right. Whether you put it in the Constitution or not, I am not prepared to give up my religious privileges. (*Hear, hear.*)

Mr. Vice-President: Order, order.

Shri Jaipal Singh: Sir, if you will forgive me, I would rather explain all this when we come to the recommendations which the Advisory Committee has made in regard to the Scheduled Tribes and others. This is not the proper time for me to talk *in extenso*. Here I would only point out to the honourable Members here that it is better not to be hasty, and, I would request you that this amendment be deferred until such time as we come to the recommendations of the Advisory Committee in regard to the Scheduled Tribes and Scheduled Areas; because, if we decide the thing at this stage, we shall be doing ourselves wrong. We shall be unfair to a very important and, at the present moment, politically helpless minority. There are hardly a dozen of them who can speak on behalf of them here, though they are thirty millions. This is a decision which must rest with the wishes of the people themselves. We are going through difficult times. Let us not make matters any more difficult. Sir, I need say nothing more than that I am opposed to this amendment, and my humble request to you would be that the further consideration of this amendment be taken up after we have come to a decision with regard to the Scheduled Tribes and Scheduled Areas.

Shri V. I. Muniswamy Pillai (Madras: General): Mr. Vice-President, Sir, I was strangely surprised to-day to see two members of the sovereign Body come up here and say that prohibition must be postponed. Let me take my

honourable Friend Mr. Jaipal Singh. He claims to represent the Adibasis—the Hill-tribes and the aborigines. A humble member like myself, coming from the region of the aborigines and Hill-tribes may tell him that there is no such thing as require liquor, toddy, brandy or any such thing, at the time of the ceremonies of the aborigines. I do not know, Sir, whether my friend has ever seen a Toda—a member of the pastoral community, living in the Nilgris. They live there under the worst conditions of the monsoon. In their life they had never seen what alcohol is. Sir, when the Britishers came, they brought in the whisky bottle and when they disappeared, from the administration of this land, we must take it that wine also has disappeared. But it is strange that to-day my friend Mr. Jaipal Singh had to plead for these unfortunate communities. I may say there are several communities like the Kotahs, Irulas, Paniyas, Kurumbas, Badagas, and others who all come under the category of Adibasis in the Province of Madras. But there none of these communities has ever come forward to protest against the authorities that drink must be given back to them. It is strange that my friend who is so sympathetic to the aborigines should plead for drink for them. I may tell him that in actual practice, all these communities have greatly benefited in the province of Madras after the introduction of prohibition. The other friend from Kolhapur has been praising Mahatma Gandhi as the Father of the Nation and all that. But unfortunately he fails to follow what Mahatma Gandhi told us. Of the four constructive programmes, Mahatma ndhi placed prohibition at the head of all the four. Why? Because he ind that the country was going to rack and ruin, and the poor were spend- all their earnings on drink and leaving their children and families in utter verty and want. I am sorry my friend has taken up this attitude and posed this amendment, so wholesomely brought before this Sovereign Body. e Province of Madras has lost yearly nearly seventeen crores of rupees. the people of Madras stood up as one man and said, "Never mind about e seventeen crores of rupees. We want the citizens, we want the poor le to be healthy and peaceful." Sir, Prohibition has brought peace and plenty he province of Madras, It has produced a marked improvement in the sique of the people and also in their economic position. I may tell you Harijans, the unfortunate communities were driven by the Caste-Hindus the Mirasdars to lowly occupations and were given their wages not in , but chits to liquor vendors that they may go and get drunk. But these ngs have now disappeared and as the Minister in charge of the portfolio, I can dare say that prohibition has brought peace and plenty to my province. So I support the amendment brought by Prof. Saksena and oppose those friends who are talking about postponing prohibition.

The Honourable Shri B. G. Kher (Bombay: General): Sir, it is rather unfortunate that the very first appearance of our new arrival from Kolhapur should have been made an occasion for attacking what is a very vital directive principle in the shaping of our constitution. Prof. Shibban Lal Saksena has suggested that at the end of Article 38 the following clause may be inserted:

"The State shall endevour to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health."

Shri Mahavir Tyagi: That amendment is my copyright and not Prof. Shibban Lal Saksena's.

The Honourable Shri B. G. Kher: I do not propose to infringe the copyright of the Honourable Mr. Mahavir Tyagi or any other Member who wishes to take the credit of it. I am perfectly willing to give it.

The amendment further says "except for medicinal purposes". From the fact that these gentlemen propose to object to this amendment it is evident that they wish that the State should allow the consumption of intoxicating drinks and drugs which are injurious to health.

[The Honourable Shri B. G. Kher]

I do not wish to speak at length on prohibition because after very deliberate consideration and prolonged discussion most of the provincial governments and most of those who are interested in the progress of this country have accepted the necessity of protecting our people from going to their ruin by the use of intoxicating drugs and liquor. They believe that humanity will not progress on proper lines unless along with intellectual and material progress they give sufficient importance to moral progress and it is too late in the day now to argue that the use of intoxicating drugs and liquor do not affect the moral sense of a person who uses them. The very lamp which shows to you the distinction between right and wrong is extinguished and it is therefore, not a matter of individual liberty, which was one of the arguments which the honourable representative from Kolhapur used. There cannot be individual liberty to commit suicide. Society is interested in every individual's prolonged life and therefore I was surprised to find such an amount of ignorance in what today is being done, thought and experienced as a result of the administration of prohibition in the provinces. Instead of getting a large excise revenue and spending it on education, the best education is to teach people to abstain from drink and drugs.

For every single rupee that the State gets by way of revenue from excise society loses three times that money by the increase of crime, by the increase of disease and the loss of efficiency. This has been admitted by economis The honourable gentleman who championed the cause of Adibasis told us th there ought to be further medical research. Medical research has been made a considerable extent and people have come to the conclusion that the consum tion of spirituous liquors and injurious drugs (the description which has be used in this clause) is admittedly injurious to health. One Honourable Mem mentioned Nira. The Bombay Government is opening Nira centres by hundreds, because Nira before it ferments and becomes toddy is a health-g drink and therefore we are allowing people to drink Nira. But we are speaking about intoxicating drinks and drugs which are injurious to health. it the contention of those honourable members that the State shall not str to prohibit the use of drugs and drinks which are injurious to the health the people? Those who use such hackneyed arguments as that of furth medical research, individual liberty or medicinal benefit, I am afraid these people are living in an isolated world of their own, because whichever province (Madras and Bombay for instance) has introduced prohibition, has come to the conclusion that the very people who indulged in the use of these liquors are today benefited so considerably that not a day passes when we do not get letters of gratitude from the members of the family of the labourers and other people who used to drink themselves to death. To say that only 10 per cent of society indulge in this and that therefore society need not worry itself about this does not need any further criticism.

I was surprised to hear an Honourable Member who represents the Adibasis attack this amendment as vicious. I am afraid that this is the way in which men's minds are perverted. The very object of introducing this amendment, which I am very happy to find has been accepted by the Honourable Dr. Ambedkar who is in charge of the Bill, is to prevent the furtherance of vice. Is it argued that the use of intoxicating liquors and injurious drugs leads to the practice of virtue? I am not quoting Mahatma Gandhi in support of my argument but he has said that he would not attach any importance to any other social reform so long as this question of the prevention of consumption of intoxicating liquors and drugs was not taken up by the State. The very first reform that he enjoined upon all the provinces was the stopping of this vicious thing. In this country almost every section of society, whether it is the Hindus, the Muslims or even Christians, have always looked upon the use of intoxicating liquor and drugs as a vice.....

Shri L. Krishnaswami Bharathi (Madras: General): As a sin.

The Honourable Shri B. G. Kher: I mean sin. The drinking of liquor is one of the five deadly sins which the *Smritis* have laid down and that was not a matter of bigotry or prejudice but the result of vast experience. Today go to America. I met a number of people who genuinely regretted that they were not able to make prohibition a success. Why were they not able to make a success of it? Simply for the reason that they have gone on too long imbibing the poison and it is too late now for them to go back. But the section of the people who have the good of the community and of their country at heart still desire that it were possible to stop the deterioration of the human race, which is sure to be brought about by the use and by making the use of intoxicating drinks respectable in society. So, though a sin both for the Hindus as also for the Muslim, after the advent of the British the use of intoxicating liquors became a sign of being fashionable, a sign of progress and culture. It is quite true that it is perhaps impossible to eradicate from the face of the earth for good and for ever these three vices—the use of liquor in one shape or other by some few people, the evil of gambling and the evil of prostitution: but it shall be the endeavour of every civilised government to prevent all these three *cankers of human society, if it is their object that society should be healthy* and happy and moral.

I do not propose to take much time of the House.

Sir, it is entirely due to the fact that our friends from Europe were used to look at liquor in a different way that people in this country began to look upon the use of liquor as respectable. Before the evil becomes so deep-rooted that we also come to the same conclusion as those in Europe and America that it is impossible to prevent our people from drinking, it is time that the State should take up this reform which is not only in the interest of this country but also of the world and of the human race in general.

I was considerably surprised at the argument of the honourable Member representing the Adibasis. Here is Mr. Thakkar who has devoted his whole life to the service of the Adibasis and I am sure he wholeheartedly agrees with the principle of this amendment. I quite agree that these people are accustomed to drink and they will have to be gradually educated but that is what this amendment proposed to do, that is, prohibiting the consumption of intoxicating drinks and drugs which are injurious to health. I do hope the honourable Members do not wish to encourage the use of drinks and drugs which are injurious to the health of the people.

I strongly support the amendment.

Mr. Vice-President: Does the Honourable Member, Dr. Ambedkar, accept the amendment?

The Honourable Dr. B. R. Ambedkar: Yes.

Mr. Vice-President: I ask the indulgence of the House as I have overlooked another amendment. That is No. 81 in list No. 3—by Sardar Bhopinder Singh Man. Does he propose to move it?

Sardar Bhopinder Singh Man (East Punjab: Sikh): Yes. *[Mr. Vice-President, I would like that where these words, namely, "Drinks and drugs" occur, the word "tobacco" also be added between them. Mr. Vice-President, I am aware that in moving this amendment, I would be incurring the displeasure of the influential members of this House and I also feel that I am going against the temper of the majority. In reminding Mr. Tyagi regarding this omission I am submitting it after judging it according to the test laid down by him. He has made out two points, namely, to prohibit those intoxicants that are bad and dangerous for health. Judging by this test we should

* [ ] Translation of Hindustani speech.

[Sardar Bhopinder Singh Man]

see whether it can be classified as an intoxicant or not, or whether it is harmful to health. I have no doubt that tobacco is an intoxicant and is more harmful to health than liquor. This is the considered opinion of the medical men that tobacco has nicotine—a poison—most harmful to health. Take the villagers; they get liquor only off-and-on, but they smoke tobacco day and night, and due to their indolence they let suffer even their important tasks. As far as the economic aspect is concerned, I can assure you that much greater loss is incurred on account of tobacco than by liquor. Not only lakhs but crores of rupees annually flow out of the country on this account. When it is realised that tobacco is in fact a dangerous intoxicant, then I do not see why Mr. Tyagi has left out tobacco while mentioning liquor and other drugs. It is probably because it is consumed by the majority but that is no reason. It is said that cigarette or bidi, if consumed in small quantity, would not be harmful to health. But this leads to another controversy of 'too-much or too less'. Even if a useful thing is consumed in excess, it might prove harmful. My point is that when you are dead against an innocent thing like liquor then why don't you prohibit tobacco also?]

Shri A. V. Thakkar (United State of Kathiawar: Saurashtra): Sir, after the case had been put by my friend Shri Bal Gangadhar Kher I did not want to speak. But I want to speak on two small matters, but those are very important matters. One is this. Mr. Jaipal Singh has said, "Let the Regional Committees or the Advisory Committees of the Adibasis come into existence; ask their opinion and then this amendment should be passed; or this should be postponed till then." That is not a correct attitude for any legislator to take.

Shri Jaipal Singh: What I said was let the Schedule dealing with the Scheduled Tribes and Scheduled Areas come up for discussion here; there was no question of consulting the Regional Council.

Shri A V. Thakkar: The Advisory Committees are still to come into existence. We do not know whether they will approve of this prohibition or disapprove of it. It should not be taken for granted that they will disapprove of it because Mr. Jaipal Singh disapproves of it.

There is another matter. All Adibasis do not want to drink: they want prohibition. I am talking of the Bhils in Gujerat, in Maharashtra, in West Khandesh and in the Central Provinces. I am talking of the Gonds also of the Central Provinces. I have asked hundreds and thousands of them whether they want drink or whether they want prohibition. Their decided answer to me has been: "Thakkar, you are talking of prohibition; you are talking of doing away with drinks. You are placing these enticements in our path and you are still asking for our opinion. For God's sake have the liquor shops closed and then ask us. We are enticed to go to drink; otherwise we will not." To give you a concrete fact about the Bhils of Panchmahals, amongst whom I have worked for 27 years, even the shops set up by the government of the day had to be closed because of the voluntary abstention of the Bhils from drinking. The shops went dry of their own accord. Nobody would visit the shops, because the Bhils had taken vows not to drink and not to become victims to the liquor shops. The shops had to be auctioned out and nobody would buy them. Therefore, it is too much to say that all Adibasis want this, or want this even as a religious right. Even in the matter of it being a religious right with the Bhils, that was the talk twenty years ago. Now they have stopped talking about it. It is not a religious right with them now.

Mr. Vice-President: May I ask the permission of the House to suspend discussion of this item so that the Honourable Sardar Vallabhbhai Patel may have an opportunity of moving the motion which stands against his name?

Honourable Members: Yes.

GOVERNMENT OF INDIA ACT, 1935 (AMENDMENT BILL)

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): Sir, I beg to move for leave to introduce a Bill to amend the Government of India Act, 1935.

Mr. Vice-President: The question is:

"That leave be granted to introduce a Bill to amend the Government of India Act, 1935."

Maulana Hasrat Mohani (United Provinces: Muslim): I beg to oppose this.

Mr. Vice-President: On what ground?

Maulana Hasrat Mohani: I will make out the reason if you please allow me to have my say. I say that he should not be allowed to introduce the Bill.

Mr. Vice-President: I shall put the matter to vote. The question is:

"That leave be granted to introduce a Bill to amend the Government of India Act, 1935."

The motion was adopted.

Maulana Hasrat Mohani: I strongly protest against this procedure. It is a well-known fact that this House is a packed House.

The Honourable Sardar Vallabhbhai J. Patel: With your leave I now introduce the Bill to amend the Government of India Act, 1935.

Mr. Vice-President: The Bill has been introduced. Now may I ask Sardar Vallabhbhai Patel to give the House some idea of the time when he proposes to move for taking the Bill into consideration? This is required only for the convenience of Honourable Members.

The Honourable Sardar Vallabhbhai J. Patel: It will be after a week.

Mr. Vice-President: Thank you. The House will now resume discussion of article 38 of the Draft Constitution. I now call upon Shri L. N. Sahu to speak.

Article 38 (*contd.*)

Seth Govind Das (C.P. & Berar: General): I move that the question be now put as far as the clause relating to prohibition is concerned.

Mr. Vice-President: I have already called upon Mr. L. N. Sahu to speak.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. Vice-President, the subject which we are discussing here today is very important. It is correct that Adibasis are addicted to the habit of drinking as has been stated by Shri Jaipal Singh, but as remarked by Shri Thakkar Baba it is also a fact that they (Adibasis) want to do away with it.

First of all, I would like to point out that the liquor used by Adibasis is of a different kind. It is prepared out of a tree and is named as "Salab Drink". It relaxes them a little but does not produce intoxication. In the words of Keshab Chandra Sen the two great gifts of the Britishers to India are on the one hand, the Bible and on the other hand the bottle. The country lost its all. Shri Keshab Chandra Sen said that Bible was really such a great book that had not the Britishers brought the bottle with them, this country as a whole would have put faith in the Bible. I speak from my experience when I say that wine produces very harmful consequences in our country. Formerly in the town where I have been living for the last 32 years, no one was given to the drink habit. But since the Government started liquor shops all persons began to

*[ ] Translation of Hindustani speech.

[Shri Lakshminarayan Sahu]

drink. My grand-children talk now of other people drinking and I am afraid that they may also take to drinking. As there is now a new order of things as we have attained independence and as it was the wish of Mahatma Gandhi that the word Prohibition should be inscribed in every public place, therefore, I desire Prohibition to be enforced. Is it now wise on Sri Jaipal Singh's part to talk of religious freedom in this context? We had the religious freedom of Sati in our country. Where is it now? Most of such other religious freedoms were abolished according to the conditions of the age. Human sacrifice was permissible amongst the aboriginals, but today that evil custom disappeared under the stress of changed circumstances. Now the Government does not permit human sacrifice. I am talking of aboriginal area. I toured along with Shri Thakkar Baba for about three or four months. In Orissa I toured alone. I found a new feeling amongst the aboriginals of that area. They have got a feeling that one who teaches should not take to drinking and one who goes to school should not also drink. Reading and drinking should never be combined. One who reads does not drink.

Aboriginals have such a nice feeling and the greater the facilities provided to them to cherish this feeling the better it would be for them. It is not fair to talk of drinking as a matter of our religious rights; and that we should fight to preserve it is quite unfair.]

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President. I accept the amendment of Prof. Shibban Lal Saksena subject to a further amendment, namely, that after the word 'and' at the beginning of his amendment (86 of List IV) the words "in particular" be added.

Shri Mahavir Tyagi: I really cannot understand how that amendment can be accepted by the Honourable Dr. Ambedkar. The amendment under discussion is mine.

The Honourable Dr. B. R. Ambedkar: Sir, I accept the amendment of Mr. Tyagi as amended by the amendment of Prof. Shibban Lal Saksena (*Laughter.*)

Mr. Vice-President: Mr. Tyagi is a great stickler for rights.

The Honourable Dr. B. R. Ambedkar: Sir, if I may say so, the right really belongs to me, because it is I who drafted the amendment he moved. (*Renewed laughter.*)

Mr. Vice-President: That puts the matter in a new light.

The Honourable Dr. B. R. Ambedkar: I do not think the House would have found any difficulty in accepting this amendment. Two points have been raised against it. One is by Prof. Khandekar who represents Kolhapur in this Assembly. I am sure that Mr. Khandekar has not sufficiently appreciated the fact that this clause is one of the clauses of an Article which enumerates what are called Directive Principles of Policy. There is therefore no compulsion on the State to act on this principle. Whether to act on this principle and when to do so are left to the State and to public opinion. Therefore, if the State thinks that the time has not come for introducing prohibition or that it might be introduced gradually or partially, under these Directive Principles it has full liberty to act. I therefore do not think that we need have any compunction in this matter.

But, Sir, I was quite surprised at the speech delivered by my friend Mr. Jaipal Singh. He said that this matter ought not to be discussed at this stage, but should be postponed till we take up for consideration the report of the Advisory Committee on Tribal Areas. If he had read the Draft Constitution, particularly the Sixth Schedule, paragraph 12, he would have found that ample

provision is made for safeguarding the position of the tribal people with regard to the question of prohibition. The scheme with regard to the tribal areas is that the law made by the State, whether by a province or by the Centre, does not automatically apply to that particular area. First of all, the law has to be made. Secondly, the District Councils or the Regional Councils which are established under this Constitution for the purposes of the administration of the affairs of these areas are given the power to say whether a particular law made by a province or by the Centre should be applied to that particular region inhabited by the tribal people or not, and particular mention is made with regard to the law relating to prohibition. I shall just read out sub-paragraph (a) of paragraph 12 which occurs on page 184 of the Draft Constitution. It says:

"Notwithstanding anything contained in this Constitution—

(a) no Act of the legislature of the State in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State prohibition or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;"

Now, I do not know what more my friend, Mr. Jaipal Singh, wants than the provision in paragraph 12 of the Sixth Schedule. My fear is that he has not read the Sixth Schedule: if he had read it, he would have realised that even though the State may apply its law regarding prohibition in any part of the country, it has no right to make it applicable to the tribal areas without the consent of the District Councils or the Regional Councils.

Mr. Vice-President: There are three amendments. One is by Mr. Mahavir Tyagi. That is No. 71 in List II. If I read the situation aright, that has been practically withdrawn. Am I right, Mr. Tyagi?

Shri Mahavir Tyagi: I have not withdrawn my amendment. I have only accepted the words which Prof. Shibban Lal Saksena intends to add to my amendment.

Mr. Vice-President: I want to know whether you want that your amendment should be put separately to the vote.

Shri Mahavir Tyagi: Yes, Sir, of course. As I have said, I want to abolish liquor altogether. He wants to add the words "except for medical purposes" Therefore my amendment is the original amendment.

Mr. Vice-President: I understand the situation. I shall now put to the vote the amendment of Mr. Mahavir Tyagi as modified by Professor Shibban Lal Saksena and further modified by Dr. Ambedkar.

Shri Mahavir Tyagi: On a point of order, Dr. Ambedkar has added the word "particular" but he has not taken my permission.

Mr. Vice-President: I take your permission on behalf of Dr. Ambedkar.

Shri Mahavir Tyagi: I accept his amendment also, Sir.

Mr. Vice-President: This particular amendment as amended is now put to the vote.

The amendment was adopted.

Mr. Vice-President: Then, there is another amendment which is No. 81 in List III moved by Sardar Bhopinder Singh Man to insert the word 'tobacco' between the words 'drinks' and 'drugs'. I now put it to the vote.

The amendment was negatived.

Mr. Vice President: I now put to the vote article 38, as amended.

The motion was adopted.

Article 38, as amended, was added to the constitution.

Mr. Vice-President: We now come to new article 38-A—amendment No. 1002 standing in the names of Pandit Thakur Das Bhargava and Seth Govind Das.

Article 38-A.

Seth Govind Das: Sir, I have an amendment to the amendment of Pandit Thakur Das Bhargava which I will move after Pandit Thakur Das Bhargava has moved his amendment.

Pandit Thakur Dass Bhargava (East Punjab: General): *[Mr. President, the words of the amendment No. 72 which I am moving in place of amendment No. 1002, are as follows:—

"That for amendment No. 1002 of the lists of amendments to 38-A the following be substituted :—

'38-A. The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the 'slaughter of cow and other useful cattle, specially milch and draught cattle and their young stock'."

At the very outset I would like to submit that this amendment.....]

Shri S. Nagappa (Madras: General): Sir, on a point of order, my honourable Friend, who can speak freely in English, is deliberately talking in Urdu or Hindustani which a large number of South Indians cannot follow.

Mr. Vice-President: The honourable Member is perfectly entitled to speak in any language he likes but I would request him to speak in English though he is not bound to speak in English.

Pandit Thakur Dass Bhargava: I wanted to speak in Hindi which is my own language about the cow and I would request you not to order me to speak in English. As the subject is a very important one, I would like to express myself in the way in which I can express myself with greater ease and facility. I would therefore request you kindly to allow me to speak in Hindi.

*[Mr. Vice-President, with regard to this amendment I would like to submit before the House that in fact this amendment like the other amendment, about which Dr. Ambedkar has stated, is his manufacture. Substantially there is no difference between the two amendments. In a way this is an agreed amendment. While moving this amendment, I have no hesitation in stating that for people like me and those that do not agree with the point of view of Dr. Ambedkar and others, this entails, in a way, a sort of sacrifice. Seth Govind Das had sent one such amendment to be included in the Fundamental Rights and other members also had sent similar amendments. To my mind it would have been much better if this could have been incorporated in the Fundamental Rights, but some of my Assembly friends differed and it is the desire of Dr. Ambedkar that this matter, instead of being included in Fundamental Rights should be incorporated in the Directive Principles. As a matter of fact, it is the agreed opinion of the Assembly that this problem should be solved in such a manner that the objective is gained without using any sort of coercion. I have purposely adopted this course, as to my mind, the amendment fulfils our object and is midway between the Directive Principles and the Fundamental Rights.

I do not want that due to its inclusion in the Fundamental Rights, non-Hindus should complain that they have been forced to accept a certain thing against their will. So far as the practical question is concerned, in my opinion, there will be absolutely no difference if the spirit of the amendment is worked out faithfully, wheresoever this amendment is placed. With regard to Article 38 which the House has just passed, I would like to state that Article 38 is like a body without a soul. If you fail to pass Article 38-A which is the proposed

* [ ] Translation of Hindustani speech.

amendment, then Article 38 will be meaningless. How can you improve your health and food position, if you do not produce full quota of cereals and milk?

This amendment is divided into three parts. Firstly, the agriculture should be improved on scientific and modern lines. Secondly, the cattle breed should be improved; and thirdly, the cow and other cattle should be protected from slaughter. To grow more food and to improve agriculture and the cattle breed are all inter-dependent and are two sides of the same coin. Today, we have to hang our head in shame, when we find that we have to import cereals from outside. I think our country is importing 46 million tons of cereals from outside. If we calculate the average of the last twelve years, namely, from 1935 to 1947, then it would be found that this country has produced 45 million tons of cereals every year. Therefore, it is certain that we are not only self-sufficient but can also export cereals from our country. If we utilize water properly, construct dams, and have proper change in the courses of rivers, use machines and tractors, make use of cropping and manuring, then surely the production will increase considerably. Besides all these, the best way of increasing the production is to improve the health of human beings and breed of cattle, whose milk and manure and labour are most essential for growing food. Thus the whole agricultural and food problem of this country is nothing but the problem of the improvement of cow and her breed. And therefore I would like to explain to you by quoting some figures, how far cattle-wealth has progressed and what is the position today.

In 1940, there were 11,56,00,960 oxen in India and in 1945 only 11,19,00,000 were left. That is to say, during these five years, there was a decrease of 37 lacs in the number of oxen. Similarly the number of buffaloes in 1940, was 3,28,91,300 and in 1945, this figure was reduced to 3,25,44,400. According to these figures, during these five years, their number was reduced by four lacs. Thus during these five years there was decrease of 41 lacs in the sum total of both the above figures taken together.

Besides this, if we see the figures of the slaughtered cattle in India we find that in 1944, 60,91,828 oxen were slaughtered, while in 1945 sixtyfive lacs were slaughtered *i.e.*, four lakhs more. In the same year 7,27:189 buffaloes were slaughtered. I do not want to take much of your time. If you wish to see latest figures then I have got them upto 1945. You can see them. I have got figures for Bombay and Madras. A look at these figures will show that there has been no decrease in their slaughter, rather it is on the increase. Therefore, I want to submit before you that the slaughter of cattle should be banned here Ours is an agricultural country and the cow is *'Kam-Dhenu'* to us—fulfiller of all our wants. From both points of view, of agriculture and food, protection of the cow becomes necessary. Our ancient sages and Rishis, realising her importance, regarded her as very sacred. Here, Lord Krishna was born, who served cows so devotedly that to this day, in affection he is known as "Makhan Chor". I would not relate to you the story of Dalip, how that Raja staked his own life for his cow. But I would like to tell you that even during the Muslim rule, Babar, Humayun, Akbar, Jahangir and even in the reign of Aurangzeb, cow-slaughter was not practised in India; not because Muslims regarded it to be bad but because, from the economic point of view, it was unprofitable.

Similarly in every country, in China, cow-slaughter is a crime. It is banned in Afghanistan as well. A year ago, a similar law was passed in Burma, Before that, under a certain law cattle only above fourteen yeras of age could be slaughtered. But eventually, the Burma Government realised that this partial ban on slaughter was not effective. On the pretext of useless cattle, many useful cattle are slaughtered. I have read in newspapers that the Pakistan Government has decided to stop the export of cattle from Western Pakistan, and they too have enforced a partial ban on slaughter of animals. In the present conditions in our country, cow-breeding is necessary, not for milk supply alone, but

[Pandit Thakur Dass Bhargava]

also for the purposes of draught and transport. It is no wonder that people worship cow in this land. But I do not appeal to you in the name of religion; I ask you to consider it in the light of economic requirements of the country. In this connection I would like to tell you the opinion of the greatest leader of our country—the Father of the Nation—on the subject. You know the ideas of revered Mahatmaji on this topic. He never wanted to put any compulsion on Muslims or non-Hindus. He said, "I hold that the question of cow-slaughter is of great moment—in certain respects of even greater moment—than that of Swaraj. Cow-slaughter and man slaughter are, in my opinion, two sides of the same coin."

Leaving it aside, I want to draw your attention to the speech of our President, Dr. Rajendra Prasad. After this the Government of India, appointed a committee—an expert representative committee—to find out whether for the benefit of the country the number of cattle can be increased, and whether their slaughter can be stopped. The Committee has unanimously decided in its favour. Seth Govind Das was also a member of the committee. The committee unanimously decided that cattle slaughter should be banned. Great minds were associated with the said committee. They examined the question from the economic view-point; they gave thought to the unproductive and unserviceable cattle also. After viewing the problem from all angles they came to the unanimous decision that slaughter of cattle should be stopped. That resolution relates not to cows alone. Slaughtering of buffaloes, which yield 50 per cent of our milk supply, and of the goats which yield 3 per cent of our milk supply, and also bring a profit of several crores, is as sinful as that of cows. In my district of Hariana, a goat yields 3 to 4 seers of milk. Perhaps a cow does not yield that much in other areas. Therefore I submit that we should consider it from an economic point of view. I also want to state that many of the cattle, which are generally regarded as useless, are not really so. Experts have made an estimate of that, and they came to the conclusion that the cattle which are regarded as useless are not really so, because we are in great need of manure. A cow, whether it be a milch-cow or not, is a moving manure factory and so, as far as cow is concerned, there can be no question of its being useless or useful. It can never be useless. In the case of cow there can be no dispute on the point.] (*Hearing the bell being rung.*) Am I to stop?

Mr. Vice President: Yes, I am asking you to stop.

Pandit Thakur Dass Bhargava: Could you give me two minutes more?

Mr. Vice-President: You have already had 25 minutes.

Pandit Thakur Dass Bhargava: *[As the Vice-President has ordered me to finish off, I shall not go into the details; otherwise I can prove by figures that the value of the refuse and urine of a cow is greater than the cost of her maintenance. In the end, I would wind up by saying that there might be people, who regard the question of banning cow-slaughter as unimportant, but I would like to remind them that the average age in our country is 23 years, and that many children die under one year of age! The real cause of all this is shortage of milk and deficiency in diet. Its remedy lies in improving the breed of the cow, and by stopping its slaughter. I attach very great importance to this amendment, so much so that if on one side of the scale you were to put this amendment and on the other all these 315 clauses of the draft, I would prefer the former. If this is accepted, the whole country would be, in a way, electrified. Therefore, I request you to accept this amendment unanimously with acclamation.]

*[ ] Translation of Hindustani speech.

Seth Govind Das: *[Mr. President, the amendment moved by Pandit Thakurdas Bhargava appears to be rather inadequate as a directive in its present form. I therefore move my amendment to his amendment. My amendment runs thus:

"That in amendment No. 1002 of the list of Amendments in article 38-A the words 'and other useful cattle, specially milch cattle and of child bearing age, young stocks and draught cattle' be deleted and the following be added at the end:

'The word "cow" includes bulls, bullocks, young stock of genus cow'."

The object of the amendment is, I hope, quite clear from its words. The amendment moved by Pandit Bhargava prohibits the slaughter of cow and other useful cattle but according to it unfit or useless cows may be slaughtered. But the object of my amendment is, as far as cows are concerned, to prohibit the slaughter of any cow, be it useful or useless and in my amendment word 'cow' includes bulls, bullocks and calves all that are born of cows. As Pandit Thakur Das told you, I had submitted this earlier to be included in Fundamental Rights but I regret that it could not be so included. The reason given is that Fundamental Rights deal only with human beings and not animals. I had then stated that just as the practice of untouchability was going to be declared an offence so also we should declare the slaughter of cows to be an offence. But it was said that while untouchability directly affected human beings the slaughter of cows affected the life of animals only—and that as the Fundamental Rights were for human beings this provision could not be included therein. Well, I did not protest against that view and thought it proper to include this provision in the Directive Principles. It will not be improper, Sir, if I mention here, that it is not for the first time that I am raising the question of cow protection. I have been a member of the Central Legislature for the last twenty-five years and I have always raised this question in the Assembly and in the Council of State. The protection of cow is a question of long standing in this country. Great importance has been attached to this question from the time of Lord Krishna. I belong to a family which worships Lord Krishna as "*Ishtadev*": I consider myself a religious minded person, and have no respect for those people of the present day society whose attitude towards religion and religious minded people is one of contempt. It is my firm belief that *Dharma* had never been uprooted from the world and nor can it be uprooted. There had been unbelievers like *Charvaka* in our country also but the creed of *Charvaka* could never flourish in this country. Now-a-days the Communist leaders of the West also and I may name among them Karl Marx, Lenin, Stalin, declare religion "the opium of the People". Russia recognised neither religion nor God but we have seen that in the last war the Russian people offered prayers to God in Churches to grant them victory. Thus it is plain from the history of ancient times as also from that of God-denying Russia that religion could not be uprooted.

Moreover, cow protection is not only a matter of religion with us; it is also a cultural and economic question. Culture is a gift of History. India is an ancient country; consequently no new culture can be imposed on it. Whosoever attempts to do so is bound to fail; he can never succeed. Ours is a culture that has gradually developed with our long history. Swaraj will have no meaning for our people in the absence of a culture. Great important cultural issues—for instance the question of the name of the country, question of National Language, question of National Script, question of the National Anthem and question of the prohibition of cow slaughter—are before this Assembly and unless the Constituent Assembly decides these questions according to the wishes of the people of the country, Swarajya will have no meaning to the common people of our country. I would like to submit, Sir, that a referendum be taken on these issues and the opinion of the people be ascertained. Again, cow protection is

* [ ] Translation of Hindustani speech.

[Seth Govind Das]

also a matter of great economic importance for us. Pandit Thakur Das Bhargava has shown to you by quoting statistics how the cattle wealth of the country is diminishing. This country is predominantly agricultural in character. I would give some figures here regarding the position of our cattle wealth. In 1935 there were one hundred nineteen million and four hundred ninety one thousand (11,94,91,000) heads of cattle. In 1940 their number came down to one hundred fifteen million and six hundred ten thousand, and in 1945 it further came down to one hundred eleven million and 9 hundred thousand. While on one side our population is increasing our cattle wealth is decreasing. Our Government is carrying on a Grow More Food Campaign. Millions of rupees are being spent on this campaign. This campaign cannot succeed so long as we do not preserve the cows. Pandit Thakur Das has given us some figures to show the number of cows slaughtered in our country. I would like to quote here some figures from the Hide and Skin Report of the Government of India. Fifty two lakhs of cows and thirteen lakhs of buffaloes are slaughtered every year in this country. It shows in what amazing numbers cattle are slaughtered here. Thirty six crores acres of land are under cultivation here. These figures also includes the land under cultivation in Pakistan. I have to give these figures because we have no figure of the land under cultivation in India since the secession of Pakistan from our country. We have six crores bullocks for the cultivation of the land. A scientific estimate would show that we need another one and a half crore of bullocks to keep this land under proper cultivation.

So far as the question of milk supply is concerned I would like to place before you figures of milk supply of other countries as compared to that of our country.

In New Zealand milk supply *per capita* is 56 ounces, in Denmark 40, in Finland 63, in Sweden 61, in Australia 45, in Canada 85, in Switzerland 49, in Netherland 35, in Norway 43, in U.S.A. 35, in Czechoslovakia 36, in Belgium 35, in Australia 30, in Germany 35, in France 30, in Poland 22, in Great Britain 39 and in India it is only 7 ounces. Just think what will be the state of health of the people of a country where they get only seven ounces of milk per head. There is a huge infantile mortality in this country. Children are dying like dogs and cats. How can they be saved without milk?

Thus even if we look at this problem from the economic point of view, we come to the conclusion that for the supply of milk and agriculture also, the protection of the cow is necessary.

I would like to place before the House one thing more. It has been proved by experience that whatever laws we may frame for the prevention of the slaughter of useful cattle, their object is not achieved. In every province there are such laws. There people slaughter cattle and pay some amount towards fines and sometimes escape even that. Thus our cattle wealth is declining day by day.

Sometime back there was a law like that in Burma but when they saw that cattle could not be saved under it, they banned cow slaughter altogether.

I would like to emphasise one point to my Muslim friends also. I would like to see my country culturally unified even though we may follow different religions. Just as a Hindu and a Sikh or a Hindu and a Jain can live in the same family, in the same way a Hindu and a Muslim can also live in the same family. The Muslims should come forward to make it clear that their religion does not compulsorily enjoin on them the slaughter of the cow. I have studied a little all the religions. I have read the life of Prophet Mohammad Sahib. The Prophet never took beef in his life. This is an historic fact.

Pandit Thakur Das Bhargava pointed out just now that from the time of Akbar to that of Aurangzeb, there was a ban on cow slaughter. I want to tell you what Babar, the first Moghul Emperor told Humayun. He said: "Refrain from cow-slaughter to win the hearts of the people of Hindustan."

Pandit Thakur Dass Bhargava just now referred to the Committee constituted by the Government of India for this purpose. It recommended that cow-slaughter should be totally banned. I admit that the Government will require money for the purpose. I want to assure you that there will be no lack of money for this purpose. If the allowance given to cattle-pounds and Goshalas is realised from the people by law, all the money needed would be realised. Even if the Government want to impose a new tax for this purpose every citizen of this country will be too glad to pay it. Therefore our Government should not raise before us the financial bogey so often raised by the British Government. I have travelled a little in this country and I am acquainted with the views of the people.]

Sir, I wish to say a few words in English to my South Indian friends.

Mr. Vice-President: I am afraid that if I give you that permission, other speakers will not have sufficient time to speak. You asked for ten minutes and I have given you fifteen minutes plus four. If you insist on more time I am prepared to give it but you could have addressed them in English.

Mr. Shibbanlal Saksena—Amendment No. 87 of List 4.

Shri R. V. Dhulekar (United Provinces: General): Sir, I have sent a little request for permission to speak.

Mr. Vice-President: If honourable members will kindly take their seats, I shall be able to say something. We have adopted a certain procedure. The amendments have to be moved one after another.

Mr. Shibbanlal Saksena.

Prof. Shibban Lal Saksena: Sir, I had given notice of an amendment in which I desired that cow slaughter should be banned completely. But after the agreement arrived at about Pt. Thakur Dass Bhargava's amendment, I waive my right to move my amendment.

An Honourable Member: But what is the amendment?

Prof. Shibban Lal Saksena: It is No. 87 in list IV, but I am not moving it.

Mr. Vice-President: In that case you cannot speak.

Prof. Shibban Lal Saksena: But there is no other amendment. I may speak on the clause now.

Pandit Balkrishna Sharma (United Provinces: General): Sir, may we know where we stand? Is the Honourable Member moving his amendment or is he taking part in the general discussion of the clause?

Prof. Shibban Lal Saksena: I am speaking generally on the clause.

Mr. Vice-President: In that case, you must wait till Shri Ram Sahai moves his amendment also, No. 88, list IV.

Shri Algu Rai Shastry (United Provinces: General): On a point of order. Professor Saksena has copied out the whole of Pt. Thakur Das's amendment and added only one or two words. In such cases only those new words should be taken as his amendment, and the whole of the amendment should not be owned by him.

Mr. Vice-President: But he has said he will be taking part in the general discussion only.

Now, Shri Ram Sahai.

Shri Ram Sahai (United State of Gwalior-Indore-Malwa: Madhya Bharat): *[Mr. Vice-President. In regard to this matter I have already tabled an amendment seeking to add these words in article 9 of Part III "The State shall

* [ ] Translation of Hindustani speech.

[Shri Ram Sahai]
ban the slaughter of cows by law". But for the very reasons that led Mr. Bhargava not to move his amendment, I have also now decided not to move mine. Still there is another amendment in my name in Part IV of the Draft Constitution.

My only object in tabling this amendment was to secure complete prohibition of the slaughter of cows. But I find here that a section of the House does not like this. I also do not like, on my part, to make any proposal that may not receive the unanimous acceptance of the House nor a proposal which may lead to the curtailment of the freedom of the provinces in this matter. Under the Directive Principles of State Policy, Provinces will have the power to stop cow slaughter totally or partially. Though there is a ban in one form or another on the slaughter of cows, in almost all countries of the world, yet I would not emphasise that fact before you.

I hope Honourable Dr. Ambedkar will appreciate and accept the amendment moved by Mr. Bhargava because it is on the basis of the assurance to this effect given by him that the amendment has been moved as a compromise.

In view of that assurance I am not moving my amendment.]

Mr. Vice-President: There is another amendment which I had overlooked. It is No. 1005, standing in the name of Shri Ranbir Singh Chaudhari.

Chaudhari Ranbir Singh (East Punjab: General): Sir, I do not propose to move that amendment. But I would like to speak on the general clause.

Mr. Vice-President: All right. Professor Saksena.

Prof. Shibban Lal Saksena: Sir, there are two aspects to this question. One is the religious aspect and the other is the economic aspect. I shall first deal with the religious aspect. I am not one of those men who think that merely because a thing has a religious aspect, it should not be enacted as law. I personally feel that cow protection, if it has become a part of the religion of the Hindus, it is because of its economic and other aspects, I believe that the Hindu religion is based mostly on the principles which have been found useful to the people of this country in the course of centuries. Therefore, if thirty crores of our population feel that this thing should be incorporated in the laws of the country, I do not think that we as an Assembly representing 35 crores should leave it out merely because it has a religious aspect. I agree with Seth Govind Das that we should not think that because a thing has a religious significance, so it is bad. I say, religion itself sanctifies what is economically good. I wish to show how important cattle preservation is for us. Mahatma Gandhi in fact, has written in so many of his articles about his belief that cow protection was most essential for our country. From the scientific point of view, I wish to point out that Dr. Wright who is an expert on the subject in his report on our National Income says that out of 22 crores of national income per annum, about eleven crores are derived from the cattle wealth of India, representing the wealth of most of our people who live in the villages.

Sometimes it is supposed that we have too many cattle and that most of them are useless, and therefore, they must be slaughtered. This is a wrong impression. If you compare the figures, you will find that in India there are only 50 cattle per 100 of the population, whereas in Denmark it is 74, in U.S.A. 71, in Canada 80, in Cape Colony 120 and in New Zealand 150. So in New Zealand, there are about three times the number of cattle per head of population than we have here. So, to say that we have too many cattle is not right. As for useless cattle, scientists say that their excreta has value as manure and its cost is more than the expenditure on the upkeep of such cattle.

* [ ] Translation of Hindustani speech.

Then again, our agriculture depends mostly on cattle, as it is mostly of small holdings where the cultivators cannot make use of tractors and other implements. They depend on bullocks, and if you compare the figures of bullocks, you will find that although we have got an area of 33½ million acres of land to cultivate, we have only six crores of bullocks which works at about 16 bullocks per 100 acres of land which is quite insufficient. Therefore, even from the point of view of our agricultural economy, we need a very large number of bullocks. It has been estimated that to meet our requirements, we would require about eleven crores more bullocks.

Then, coming to our requirements of milk and other products, if we compare our milk consumption with that of other countries, we find that it is only 5 oz. per head, and that is very little, compared to the figures of other countries. Therefore I think that we must have this amendment incorporated in our Constitution.

The other important evils in our country are infant mortality and tuberculosis which have their origion in deficient milk diet. These evils can be remedied only if we preserve our cattle and improve their breed, which is the purpose of this amendment. I therefore think that this amendment should be accepted.

Then there is the use of Vanaspati ghee, which has become an economic necessity, because there is no pure ghee available anywhere. If we are able to give effect to this amendment we can improve the breed of cattle and then we will be able to do away with the use of Vanaspati, which is so injurious to the health of the nation.

Also from the point of view of the requirements of our climate this amendment is very necessary. I think the amendment is very well worded. It says that we shall try to "organise agriculture and animal husbandry on modern and scientific lines and in particular take steps to preserve, protect, and improve the useful breeds of cattle and ban the slaughter of cow and other useful cattle, especially milch cattle and of child-bearing age, young stocks and draught cattle". I think the amendment of Seth Govind Das is included in it. I am sure, representatives of people elected on adult suffrage will surely incorporate in their state laws legislation which will give effect to this amendment and we shall then have in our land no cow slaughter. I therefore support this amendment wholeheartedly.

Dr. Raghu Vira (C.P. and Berar: General): Sir, I think it my most bounden duty in this House to express the feelings, feelings which no words can really convey, that not a single cow shall be slaughtered in this land.

गौर् अघ्न्या भवति । न हिंसितव्या । न हिंसतिव्या । यः कश्चिद् गां हिनस्ति महापातकी भवति

These sentiments which were expressed thousands of years ago still ring in the hearts of tens of millions of this land. My friends tell me that it is an economic question, that Muslim kings have supported the preservation of cows and banned the killing of the cows. That is all right. But when we attain freedom, freedom to express ourselves in every form and manner—our Preamble says 'There shall be liberty of expression'—is that merely expression of thought or is that the expression of our whole being? This country evolved a civilization and in that civilization we gave prominent place to what we call *Ahimsa* or non-killing and non-injury, not merely of human beings but also of the animal kingdom. The entire universe was treated as one and the cow is the symbol of that oneness of life and are we not going to maintain it? *Brahma hatya* and *go-hatya*—the killing of the learned man, the scientist, the philosopher or the sage and the killing of a cow are on a par. If we do not allow the killing of

[Dr. Raghu Vira]

a scientist or a sage in this land it shall certainly be ordained by this House that no cow shall be killed. I know in my childhood we were not allowed to drink until the cow has had its drink and we were not allowed to eat till the cow has had its meal. The cow takes precedence over the children of the family, because she is the mother of the individual, she is the mother of the nation. Ladies and gentlemen in this House, I appeal to you to look back with serenity and to search your souls. We are representatives of millions of our people.....

Mr. Vice-President: The Honourable Member must address the Chair. This is not a public platform.

Dr. Raghu Vira: Through you, Sir, I wish to convey the feeling of this House and other people of this country that the cow shall be saved in the interests of the country and in the interests of our culture. And with these words, Sir, I take your leave.

Shri R. V. Dhulekar: Sir, I always believed from my childhood that India had a mission and because India had a mission therefore I wanted the independence of this country. Many millions of the people, who died for this country, also like me had believed that India had a mission, and what was that mission? The mission was that we should go about the world and carry the message of peace, love, freedom and *Abhaya* (freedom from fear) to every body in the world. When independence was achieved I was happy to believe that I shall carry out my mission, that I shall carry to the world this message, viz., that India has got no grudge against any country in the world, it has no expansionist ideas but that it is going to save the whole world from the danger of internecine war, bloodshed and many other ills that humanity is suffering from. In the same way and for the same purpose I appeal to the House to discuss this subject from a dispassionate point of view. It is not the crumbs, the loaves and fishes that we are fighting for. Loaves and fishes were left behind by some people thirty years back and by some others fifty years back. We did not want to achieve this independence for loaves and fishes. Those who want them are welcome but men like us who have a mission or a message for the world cannot love loaves and fishes. We do not want ambassadorship, premierships, ministerships or wealth. We want that India should declare today that the whole human world as well as the whole animal world is free today and will be protected. The cow is a representative of the animal kingdom, the *peepal* tree is the representative of the vegetable kingdom, the touchstone or the *shaligram* is the representative of the mineral world. We want to save and give peace and protection to all those four worlds and therefore it is that the Hindus of India have put these four things as representatives of this world—the human being, the cow, the *peepal* and the *shaligram*. All these were worshipped because we wanted to protect the whole humanity. Our *Upanishad* says:

ईशावास्यमिदम् सर्वं यत्किञ्च जगत्यां जगत् । तेन त्यक्तेन भुञ्जी था : मागृध कस्य स्वित् धनम् ॥

We do not want this property, we do not want this food; we do not want this raiment—not because we cannot take it; not because we are cowards; not because we cannot carry Imperialism to the four corners of the world; but we may not have it because we see the whole world identical with our own soul. So our humanity which resides in this Bharatvarsha for several thousand years has marched forward and has taken the cow within the fold of human society. Some people here talked to me and said "You say that you want to protect the cow and want it to be included in the Fundamental Rights. Is the protection of the cow a fundamental right of a human being? Or is it the fundamental right of the cow?" I replied to them and tell them suppose it is a question of saving your mother or protecting your mother. Whose fundamental right is

it? Is it the fundamental right of the mother? No. It is my fundamental right to protect my mother, to protect my wife, my children and my country. In the Fundamental Rights you have said that you will give justice, equity and all these things. Why? Because you say "it is your fundamental right to have justice". What does that justice mean? It means that we shall be protected, our families shall be protected. And our Hindu society, or our Indian society, has included the cow in our fold. It is just like our mother. In fact it is more than our mother. I can declare from this platform that there are thousands of persons who will not run at a man to kill that man for their mother or wife or children, but they will run at a man if that man does not want to protect the cow or wants to kill her.

With these few words, I wish to say that these two amendments which have been put forward by Mr. Bhargava and Seth Govind Das should be dealt with dispassionately. I shall appeal to you that only that amendment should be passed which is very clear. If Mr. Bhargava's amendment is doubtful, then certainly Seth Govind Das's amendment should be passed.

Mr. Vice-President: Following my usual practice I must give an opportunity to people who hold different views from the majority view and I am therefore calling upon Mr. Lari to speak.

Mr. Z. H. Lari (United Provinces: Muslim): Mr. Vice-President, I appreciate the sentiments of those who want protection of the cow—may be on religious grounds or may be in the interests of agriculture in this country. I have come here not to oppose or support any of the amendments but to request the House to make the position quite clear and not to leave the matter in any ambiguity or doubt. The House, at the same time, must appreciate that Mussalmans of India have been, and are, under the impression that they can, without violence to the principles which govern the State, sacrifice cows and other animals on the occasion of *Bakrid*. It is for the majority to decide one way or the other. We are not here to obstruct the attitude that the majority community is going to adopt. But let there not linger an idea in the mind of the Muslim public that they can do one thing, though in fact they are not expected to do that. The result has been, as I know in my own Province on the occasion of the last *Bakrid*, so many orders under Section 144 in various places, districts and cities. The consequence has been the arrests of many, molestation of even more, and imprisonment of some. Therefore, if the House is of the opinion that slaughter of cows should be prohibited, let it be prohibited in clear, definite and unambiguous words. I do not want that there should be a show that you could have this thing although the intention may be otherwise. My own submission to this House is that it is better to come forward and incorporate a clause in Fundamental Rights that cow slaughter is henceforth prohibited, rather than it being left vague in the Directive Principles, leaving it open to Provincial Governments to adopt it one way or the other, and even without adopting definite legislation to resort to emergency powers under the Criminal Procedure. In the interests of good-will in the country and of cordial relations between the different communities I submit that this is the proper occasion when the majority should express itself clearly and definitely.

I for one can say that this is a matter on which we will not stand in the way of the majority if the majority wants to proceed in a certain way, whatever may be our inclinations. We feel—we know that our religion does not necessarily say that you must sacrifice cow: it permits it. The question is whether, considering the sentiments that you have, considering the regard which the majority have for certain classes of animals, do they or do they not permit the minority—not a right—but a privilege or a permission which it at present has? I cannot put it higher. I won't class it as interference with my religion. But I do not want that my liberty should be taken away, and especially the peaceful celebration of any festival should be marred by the promulgation of

[Mr. Z. H. Lari]

orders under Section 144. I have come only to plead that. Therefore, let the leaders of the majority community here and now make it clear and not leave it to the back-benchers to come forward and deliver sermons one way or the other. Let those who guide the destinies of the country, make or mar them, say definitely "this is our view", and we will submit to it. We are not going to violate it. This is the only thing I have come to say. I hope you will not misunderstand me when I say this. It is not due to anger, malice or resentment but it is out of regard for cordial relations between the communities, and what is more, due to the necessity of having a clear mind that I say this. Henceforward the Muslim minority must know where they stand so that they may act accordingly, and there be no occasion for any misunderstanding between the majority and the Muslims on this point.

In view of what I have said, I would not oppose nor support any of the amendments, but I would invite a very clear and definite rule instead of the vague phraseology of the clauses which have been put forward. It proceeds to say that we should have modern and scientific agriculture. Modern and scientific agriculture will mean mechanisation and so many other things. The preceding portion of the clause speaking about modern and scientific agriculture and the subsequent portion banning slaughter of cattle do not fit in with each other. I appreciate the sentiments of another member who said "this is our sentiment, and it is out of that sentiment that we want this article". Let that article be there, but for God's sake, postpone the discussion of the article and bring it in clear, definite and unambiguous terms so that we may know where we stand and thereafter there should be no occasion for any misunderstanding between the two communities on this issue which does not affect religion but affects practices which obtain in the country.

Syed Muhammad Sa'adulla (Assam: Muslim): Mr. Vice-President, Sir, the subject of debate before the House now has two fronts, the religious front and the economic front. Some who want to have a section in our Constitution that cow killing should be stopped for all time probably base it on the religious front. I have every sympathy and appreciation for their feelings; for, I am student of comparative religions. I know that the vast majority of the Hindu nation revere the cow as their goddess and therefore they cannot brook the idea of seeing it slaughtered. I am a Muslim as everyone knows. In my religious book, the Holy Qoran, there is an injunction to the Muslims saying—

"La Ikraba fid Din", or

or, there ought to be no compulsion in the name of religion. I therefore do not like to use my veto when my Hindu brethren want to place this matter in our Constitution from the religious point of view. I do not also want to obstruct the framers of our Constitution, I mean the Constituent Assembly if they come out in the open and say directly: "This is part of our religion. The cow should be protected from slaughter and therefore we want its provision either in the Fundamental Rights or in the Directive Principles."

But, those who put it on the economic front, as the honourable Member who spoke before me said, do create a suspicion in the minds of many that the ingrained Hindu feeling against cow slaughter is being satisfied by the back-door. If you put it on the economic front, I will place before you certain facts and figures which will show that the slaughter of cows is not as bad as it is sought to be made out from the economic point of view. I have very vast and varied experience of the province of Assam and therefore I will quote you figures from Assam only. In the year 1931, under the orders of the then Central Government, a census of the cattle wealth of the province was undertaken. We found that in 1931, Assam had 70 lakhs of cattle as against a human population of 90 lakhs. It will stagger my friends from the other parts

of India when I place before them the fact that the average yield of an Assam cow is but a quarter seer of milk daily and that it is so puny in stature that its draught power is practically nil. Assam is dependent for her draught cattle on the province of Bihar. During the last war, when there was tremendous difficulty as regards transport, we could not get any cattle from Bihar, with the result that we were compelled to use our own small cattle for the purpose of ploughing. In order to conserve this cattle, the Government of Assam passed a law prohibiting the slaughter of cattle in milch or cattle which could be used for the purpose of draught. But, wonder of wonders, I personally found that droves of cattle were being taken to the military depots for being slaughtered, not by Muslims, but by Hindus who had big "*sikhas*" on their heads. When I saw this during my tours I asked those persons why, in spite of their religion and in spite of Government orders, they were taking the cattle to be slaughtered. They said: "Sir, these are all unserviceable cattle. They are all dead-weight on our economy. We want to get ready cash in exchange for them".

My friend Seth Govind Das mentioned the case of cattle that were killed. I questioned him privately. The figures in the Hides and Skins Report are from the hides. I know there is a community amongst Hindus themselves who go by the name of 'Rishis' in our part of the country whose sole occupation in life is to take away the skin from dead cattle. They have got absolutely no objection even to flay the skin of slaughtered cattle. The figures given by Seth Govind Das include the numbers of both the dead and slaughtered cattle. Similarly the figures given by Pandit Bhargava are not the figures of cattle slaughtered during normal times. They were, as Honourable Members know, war years and, on account of the fact that the Japanese had invaded India through Assam, Assam alone had to accommodate about 5 lakhs of fighting men and an equal number of camp followers. Cattle from all parts of India were then taken to Assam to feed these ten lakhs of people from America and elsewhere, whites as well as blacks. Even the Chinese soldiers were there in Assam, not to speak of soldiers from every part of India. Therefore, those were abnormal years and you cannot base your arguments on the figures of the years 1945 and 1946.

Pandit Thakur Dass Bhargava: But, during those years, there was a ban on the slaughter of cattle imposed by the Government of India. They had issued orders banning the slaughter of cattle. It is in spite of that that the figures of slaughter have been so high.

Syed Muhammad Saiadulla: I do not want to be side-tracked. The point is that there are cattle and cattle. We were trying to get cattle from West Punjab just before Partition. The cattle there on an average give half a maund of milk. The Assam Government have been trying to improve the milk yield of their cattle by introducing cattle from England, Australia and the Punjab. We have yet touched only the fringe of the problem with our Government cattle farms and we have succeeded only in Shillong. The milk yield there has increased but in the plains the milk yield is only quarter seer daily.

The motion of Pandit Bhargava is that, in order to improve the economic condition of the people, we should try scientific measures. That presupposes that the useless cattle should be done away with and better breeds introduced.

Now, I ask you what is to be done with these seventy lakhs of cattle that we have got in Assam? Therefore, Sir, if you place it on the economic front, you are met with this proposition that we have got such a big number of uneconomic cattle that must be done away with before you can supplant them with a better breed. Another point is.....

Pandit Thakur Dass Bhargava: Does not the honourable Member know that many useless cattle have been turned into good cattle by *goshalas* and other organisations and at least 90 per cent can be salvaged by proper feeding and treatment.

Syed Muhammad Saiadulla: Sir, I do not know of goshalas in other parts and I do not want to reply to Pandit Bhargava as I have only ten minutes to speak. I was telling the House that there is a lurking suspicion in the minds of many that it is the Muslim people who are responsible for this slaughter of cows. That is absolutely wrong.

Pandit Thakur Dass Bhargava: Quite wrong.

Syed Muhammad Saiadulla: I am glad that the Mover of this amendment says that it is quite wrong. There are lakhs of Muslims who do not eat cow's flesh. I am not speaking in any sense of braggadocio when I say that I myself do not take it. Before the partition the Muslims were only one-fourth of the total population. They did not raise sufficient cattle to kill. It is the majority people who sold their cattle to the Muslims to be killed. Now the Muslims form only one-tenth of the population of the Dominion of India. Do you think that the Mussalmans can raise sufficient cattle to slaughter them? Muslims are poorer than our Hindu brethren. The Muslims are as much agriculturists as the Hindus and the cattle in their farms form their capital asset, the natural source of their power to till the land and produce the food which will maintain them for the entire year. Therefore it is wrong to say that the Muslims kill the cows either to offend my Hindu friends or for any other purpose. Fortunately or unfortunately the Muslims are a meat-eating people. The price of mutton is so high that many poor people cannot buy it. Therefore on rare occasions they have to use the flesh of the cow. From my own knowledge, it is only the barren cows that go to the butcher. Speaking for Assam, it is the hill people who are the worst culprits in this respect. In the town of Shillong, there is only one Muslim butcher against seventy from the hill people, who deal in beef. Sir, in these circumstances, in the name of the economic front, I cannot lend my support to the motion moved by Pandit Bhargava. I am sorry that for the reasons given already, I am compelled to oppose the amendment of Seth Govind Das.

The Honourable Dr. B. R. Ambedkar: I accept the amendment of Pandit Thakur Dass Bhargava.

Mr. Vice-President: I shall now put the amendments one by one to the vote. The amendment of Pandit Thakur Dass Bhargava. That is No. 72 in List II.

Seth Govind Das: What about my amendment which has been moved as an amendment to Pandit Bhargava's amendment? That should be put to the vote first.

Mr. Vice-President: You moved your amendment as an amendment to No. 1002 which was not moved.

Pandit Thakur Dass Bhargava: I substituted No. 72 for No. 1002.

Seth Govind Das: My amendment is an amendment to the amendment which Pandit Bhargava just moved.

Mr. Vice-President: All right. I am willing to put your amendment to the vote. Now, the amendment of Seth Govind Das, i.e., 73 in List No. II, is now put to the vote.

The question is:

"That in amendment No. 1002 of the List of Amendments, in article 38-A, the words 'and other useful cattle, specially milch cattle and of child bearing age, young stocks and draught cattle' be deleted and the following be added at the end :—

'The word 'Cow' includes bulls, bullocks, young stock of genus cow.' "

The amendment was negatived.

Mr. Vice-President: Now amendment No. 72 in List II by Pandit Thakur Dass Bhargava is put to the vote.

The question is:

"That in amendment No. 1002 of the List of Amendments, for article 38-A, the following be substituted :—

'38-A. The State shall endeavour to organise agriculture and animal husbandry in modern and scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cow and other useful cattle specially milch and draught cattle and their young stocks.' "

The motion was adopted.

Mr. Vice-President: Article 38-A will consist of the amendment of Pandit Thakur Dass Bhargava. The question before the House is:

"That article 38-A in the form just mentioned form part of the Constitution."

The motion was adopted.

Article 38-A, as amended, was added to the Constitution.

Article 39

Mr. Vice-President: Shall we now go on to the next item in the agenda? No. 1003 has been covered by one of the previous amendments. No. 1004 has also been disposed of. Then No. 1005. The first part of it cannot be moved, but the second part can be moved. (Not moved.)

Then the motion before the House is that article 39 forms part of the Constitution. There are several amendments to this.

(Nos. 1006, 1007 and 1008 were not moved.) No. 1009 by Dr. Ambedkar and his colleagues.

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

"That in article 39, after the words 'from spoliation' the word 'disfigurement' be inserted."

Prof. Shibban Lal Saksena: Mr. Vice-President, Sir, I beg to move:

"That in article 39, after the words 'from spoliation' the word 'disfigurement' be inserted, and all the words after the words 'may be' to the end of the article be deleted."

The Honourable Dr. B. R. Ambedkar: Why do you want to make a speech when I am going to accept it?

Prof. Shibban Lal Saksena: I am glad that Dr. Ambedkar is going to accept it. Because this article is to be a directive principle, it should not mention about laws of Parliament and so we must omit the words "to preserve and maintain according to law made by Parliament all such monuments or places or objects."

The Honourable Dr. B. R. Ambedkar: Sir, I accept the amendment.

Mr. Vice-President: There is another amendment in the name of Shri Ram Sahai, which is identical in words. I shall put this to vote.

Shri Ram Sahai: *[Mr. Vice-President, Sir, there are two amendments in my name, and one of them is covered by the amendment just moved by Mr. Shibban Lal Saksena. As Mr. Saksena's amendment has been accepted by Dr. Ambedkar, I need not move mine. Now I move my other amendment that seeks to replace the words "It shall be the obligation of the State" in Article 39 by the words "The State shall". My object in moving the amendment is that the words "The State shall" should be in Article 39 just as they have been put in the preceding article and the words "It shall be the obligation of the State" should not be put in here. I have moved this amendment to bring all these Articles into conformity. I hope Dr. Ambedkar will accept it and so will the House.]

Mr. Vice President: I am now putting the amendments one by one.

The question is:

"That in article 39, after the words 'from spoliation' the word 'disfigurement' be inserted."

The motion was adopted.

Mr. Vice-President: There is the amendment of Prof. Shibban Lal Saksena.

* [ ] Translation of Hindustani speech.

Begum Aizaz Rasul (United Provinces: Muslim): May I know if Dr. Ambedkar has accepted Prof. Shibban Lal Saksena's amendment? If not, I wish to oppose the second part.

Mr. Vice-President: There is no second part so far as I am aware. It only refers to deletion of certain words. The first part is the same.

Begum Aizaz Rasul: I wish to oppose that motion.

Mr. Vice-President: I am afraid it is too late now. The question is:

"That in article 39, after the words 'from spoliation', the word 'disfigurement' be inserted, and all the words after the words 'may be' to the end of the article be deleted."

The motion was adopted.

Mr. Vice-President: The question is:

"That in article 39, for the words 'It shall be the obligation of the State to', the words 'The State shall' be substituted."

The motion was negatived.

Shri Ram Sahai: I want to point out that Dr. Ambedkar has accepted my amendment. I would request you kindly to again call for voting.

Mr. Vice-President: I put the matter before the House and the House has rejected it, and whatever the reasons might be, it is not for me to reopen the matter.

I will put that clause in the form in which it now stands before the House.

Shri Ram Sahai: *[My submission is, Sir, that Dr. Ambedkar has already accepted my amendment. I demand division on this question.]

Mr. Vice-President: It is too late now. Why don't you stand up in proper time and demand a division? The matter is now closed. The question is:

"That article 39, as amended, do stand part of the Constitution."

The motion was adopted.

Article 39, as amended, was added to the Constitution.

Article 39-A

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I move:

"That after article 39, the following new article be inserted :—

'39-A. That State shall take steps to secure that, within a period of three years from the commencement of this Constitution, there is separation of the judiciary from the executive in the public services of the State.' "

I do not think it is necessary for me to make any very lengthy statement in support of the amendment which I have moved. It has been the desire of this country from long past that there should be separation of the judiciary from the executive and the demand has been continued right from the time when the Congress was founded. Unfortunately, the British Government did not give effect to the resolutions of the Congress demanding this particular principle being introduced into the administration of the country. We think that the time has come when this reform should be carried out. It is, of course, realised that there may be certain difficulties in the carrying out of this reform; consequently this amendment has taken into consideration two particular matters which may be found to be matters of difficulty. One is this: that we deliberately did not make it a matter of fundamental principle, because if we had made it a matter of fundamental principle it would have become absolutely obligatory instantaneously on the passing of the constitution to bring about the separation of the judiciary and the executive. We have therefore deliberately put this matter in the chapter dealing with directive principles and there too we have provided that this reform shall be carried out within three years, so that there is no room left for what might be called procrastination in a matter of this kind. Sir, I move.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, this is an after-thought of Dr. Ambedkar or, shall I say, of the rump of the

* [ ] Translation of Hindustani speech.

Drafting Committee. I do not know why they did not think of it at the time they drafted this particular Part of the Draft Constitution. Probably, he felt that in view of the fact that quite a number of new items have crept into this Part which might be called a veritable dust-bin of sentiment, he might also find a place in it for this particular amendment of his, I see no objection actually to this or any other amendment coming in because this dust-bin seems to be sufficiently resilient as to permit any individual of this House to ride his hobby-horse into it. But, I cannot understand Dr. Ambedkar's explanation when he said that he did not want to put this in the Fundamental Rights. He only wanted to make it permissive; but then he insists on a three-year limit within which this has to be carried out! As a matter of fact, when he himself realises it is not mandatory, what is the object of putting a three-year limit? The mere expression of the wishes of the framers of this Constitution that there should be separation of the judiciary from the executive is quite enough. It ought to be put into practice by the various Provincial Governments as early as possible. Where is the merit of the three-year limit in this particular matter? I personally would have favoured the amendment proposed by my friend Pandit Lakshmi Kanta Maitra, amendment No. 960.

The learned Doctor said that this has been practically one of the basic demands of the Congress ever since it was founded. I believe it is so; I do not want to deny it. I also remember that an eminent Congressman, who was Prime Minister of one of the major provinces in this country, once said that ideas about the separation of the judiciary from the executive have changed, and that because a foreign Government was no longer in power, separation need not be effected. This does not seem to be such a cardinal principle as politicians chose to believe it to be in the days when the British were in power.

The learned Doctor must have known that some provinces have already taken some steps in the matter of separating the judicial and executive functions. I think three major provinces have moved in the matter. Actually they have not made much progress, probably for various reasons, either other preoccupations or finance, or whatever it may be. I do not see why we should ask them to do this within three years when probably it could be done in six or seven years. What I really feel about this amendment is that there is no rhyme or reason in Dr. Ambedkar seeking to tie the hands of provincial Governments by saying that this should be done in three years, though actually, he cannot tie the hands of the provincial Governments by this directive as the provincial Governments can ignore this provision. We are merely voicing a pious wish and tying it up with a period within which we know that it may not be carried into effect.

In this connection, I would like to strike a note of warning. There are several amendments tabled in regard to this question of judiciary which are to be moved by the rump of the Drafting Committee, which are in the nature of an after-thought. For a Professor, it is all very good to envisage a complete separation of the judiciary and the executive. But in actual practice, it might work out in a different way altogether. It might also be that in trying to give the judiciary an enormous amount of power,—a judiciary which may not be controlled by any legislature in any manner except perhaps by the means of ultimate removal—we may perhaps be creating a Frankenstein which would nullify the intentions of the framers of this Constitution. I have in mind the difficulties that were experienced in another country where they have a rigid Constitution, the United States of America, not merely during the time of the New Deal of President Franklin Roosevelt, but also at the time of President Theodore Roosevelt when the Progressive Party felt that the judiciary was interfering unduly with the liberalising of the administration. My feeling is that while I have the greatest respect for Dr. Ambedkar's views on this matter, to put the Constitution of the country in a straight jacket by giving undue power

[Shri T. T. Krishnamachari]

to the judiciary at a time when we know that in the matter of recruitment to the judiciary, we are not able to get A Class men at all, is unwise. I see instances of judicial officers, Judges of the High Courts becoming administrators, and coming back to the judiciary, because, I suppose, the Government is not able to find sufficient material from the Bar to fill vacancies in the judiciary. It seems in every province the type of people that come up to the top so far as judicial officers are concerned is not about the best that we could possibly get. In these circumstances, this trend of empowering the judiciary beyond all reason and making it a regular administration by itself, will perhaps lead to a greater danger than we can now contemplate. I do not know if at this stage I can appeal to the mover of this amendment to remove the three-year limit, which is superflous and meaningless and which may not be carried into effect, and which would then be a matter of inducing the provincial Governments to flout the Constitution, and allow the view to be expressed as a mere sentiment as other Articles in this Part happen to be. I do not know if Dr. Ambedkar will ever be persuaded, particularly in view of the fact, I think, that the Congress party has approved of the draft in this particular form; but I think there is no harm in pointing out the obvious difficulty in the wording of this particular amendment, which perhaps is otherwise quite unexceptionable.

Shri B. Das (Orissa: General): Mr. Vice-President, Sir, I suggest to the House to postpone consideration of this amendment of Dr. Ambedkar to a later date. The Congress is meeting very shortly at Jaipur. When the people were harassed by the former British Government, we thought we had no justice from the British Government and we wanted separation of the judiciary from the executive. That suspicion does not exist now. We have to examine whether separation today is necessary.

Unfortunately, I find India is lawyer-ridden. In this House, more than fifty per cent. of the members are lawyers. The Municipalities have more lawyers than are necessary. The Ministry has got a large number of lawyers: I am speaking of our own Government here. Though it is a pious wish of this House that in three years the judiciary must be separated from the executive, because it is not included in the Fundamental Rights, we have to consider, and I think this House will allow the Congress at Jaipur to consider, whether the huge expenses that would be incurred, the country can afford to bear.

There had been Pay Committees of Government of India and the Provinces who have not thought of lowering the salary level of the Executive or Judicial Officers. This House had accepted Village Panchayats. Dr. Ambedkar was generous to refer to the Congress principles. Is it practicable to-day? I support my friend Mr. Krishnamachari that it is not possible in three years. It will take ten or twenty years to give effect. Otherwise most of the Provincial Governments will go bankrupt if they pay the salaries that the Judicial Officers are getting. Incidentally I will allude to one fact. I find even the Government of India recently increased the number of Federal Court Judges from three to five. We go on generously providing high judicial appointments and now we want to provide separate judiciary from the executive, provide more lawyers and munsifs and district judges to allow more lawyers to argue the case on both sides. Where will the poor man be! I would respectfully suggest to this House to allow this amendment to stand over and let us see what the Jaipur Congress thinks on the subject after one year of freedom. Remember the Congress has not met since we won our freedom or so-called freedom from the British. If we have won our independence, let us try to think it out in our era of independence.

Mr. Vice-President: The House stands adjourned till 10 A.M. to-morrow.

The Assembly then adjourned till Ten of the Clock on Thursday, the 25th November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, 25th November 1948

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

DRAFT CONSTITUTION—*contd.*

Article 39-A

Mr. Vice-President (Dr. H. C. Mookherjee): Notice of an amendment has been received from Dr. Ambedkar. Will you please move your amendment, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar: (Bombay: General): Mr. Vice-President, I move:

that in article 39-A delete the words beginning from "secure" up to "separation of", and in their place substitute the word "separate".

so that the article 39-A, with this amendment would read as follows:—

"The State shall take steps to separate the judiciary from the executive in the public services of the State."

The House will see that the object of this amendment is to eliminate the period of three years which has been stated in the original article as proposed by 39-A. The reasons why I have been obliged to make this amendment are these. There is a section of the House which feels that in these directive principles we ought not to introduce matters of details relating either to period or to procedure. These directive principles ought to enunciate principles and ought not to go into the details of the working out of the principles. That is one reason why I feel that the period of three years ought to be eliminated from article 39-A.

The second reason why I am forced to make this amendment is this. The expression "three years" has again brought about a sort of division of opinion amongst certain members of the House. Some say, if you have three years period, then no government is going to take any step until the third year has come into duration. You are practically permitting the provincial legislatures not to take any steps for three years by mentioning three years in this article. The other view is that three years may be too short. It may be that three years may be long enough so far as provinces are concerned, where the administrative machinery is well established and can be altered and amended so as to bring about the separation. But we have used the word "State" in the directive principles to cover not only the provincial governments but also the governments of the Indian States. It is contended that the administration in the Indian States for a long time may not be such as to bring about this desired result. Consequently the period of three years, so far as the Indian States are concerned, is too short. All these arguments have undoubtedly a certain amount of force which it is not possible to ignore. It is, therefore, thought that this article would serve the purpose which we all of us have in view, if the article merely contained a mandatory

[The Honourable Dr. B. R. Ambedkar]

provision, giving a direction to the State, both in provinces as well as in the Indian States, that this Constitution imposes, so to say, an obligation to separate the judiciary from the executive in the public services of the State, the intention being that where it is possible, it shall be done immediately without any delay, and where immediate operation of this principle is not possible, it shall, none the less, be accepted as an imperative obligation, the procrastination of which is not tolerated by the principles underlying this Constitution. I therefore submit that the amendment which I have moved meets all the points of view which are prevalent in this House, and I hope that this House will give its accord to this amendment.

Prof. Shibban Lal Saksena: (United Provinces: General): Sir, Dr. Ambedkar has already moved an amendment, that is he has added a new article No. 39-A. Is it permissible to a member to amend his own amendment?

Mr. Vice-President: Yes. I would request you all to bear in mind that we have to go to the fundamentals and not to technicalities.

Shri R. K. Sidhwa (C.P. and Berar: General): Mr. Vice-President, Sir, I am very glad that Dr. Ambedkar has moved this amendment and that at this late stage better counsels and sense have prevailed. In article 36 a similar time limit has been mentioned in connection with a very important matter—primary education. I objected to it, then saying that in the directive principles, no such time limit should be fixed. But my voice was one in the wilderness and the article was carried. But I am very glad at this late stage, better sense has prevailed and the time limit in this article has been sought to be removed.

Yesterday my friend Mr. Das stated that this question of separation of the executive and the judiciary has absolutely changed in view of the attainment of freedom. I was rather surprised to hear such an argument. If a principle, a basic principle was bad at the time of the British regime, I fail to understand how it can be good in free India. The basic principle is this, that the judiciary and the executive functions are combined. The District Magistrate is the prosecutor and he is also the administrator of justice. May I ask whether under these circumstances, can impartial justice be dispensed by the same person who prosecutes and also at the same time sits in judgment over that case?

As Dr. Ambedkar stated yesterday, ever since its inception the Congress has been stating that these two functions must be separated if you really want impartial justice to be done to the accused persons.

The arguments advanced yesterday were that in Free India the conditions have changed and that therefore it is not desirable that these two functions should be separated. The real secret, so far as I know, of those who advocate retaining the same position is that they want to retain their power. If the Honourable Ministers of the Provincial Governments feel that these two should not be separated, it is because they feel the power of appointments, which is in their patronage, would go away from them to the High Court Judges. I am very sorry if that is so. I am glad however that some of the Provinces have already started in this direction; but if any Provincial Governments feel that under the changed condition this change should not come, I will be very sorry for them because nothing has changed in the very fundamental principle after we had attained our freedom; on the contrary after the freedom or even during the partial freedom that we had, I would have preferred that our Congress Governments should really have taken an initiative in this matter. I am very glad to observe that some of the Provinces are going in that direction. The High Court Benches, even in the

British regime, have stated times without number that if you really want impartial justice done, these two departments must be separated.

While the time-limit has been removed, I expect, Sir, that after the passing of this Constitution or rather immediately I should say, I would desire these two functions should be separated. I therefore expect that while the time-limit has been removed, the Ministries in the Provinces will realize their duty and see that these two functions are separated in the interests of right and impartial justice.

With these words I commend the amendment that has been moved, for the acceptance of this House.

Mr. Vice-President: I shall now put this amendment to the vote.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, it is an important amendment and I hope you will allow the House to express its opinion on it.

Mr. Vice-President: Will you please come to the microphone then?

Pandit Hirday Nath Kunzru: Mr. Vice-President, the proposition that judicial functions should be separated from the executive was placed before the House yesterday by Dr. Ambedkar. I think that he gave the matter his very careful consideration before proposing that this separation should take place in three years.

Everyone knows the importance of this subject. The demand for the separation of the judicial from the executive functions so that the executive may have nothing to do with the administration of justice, is about fifty years old, and when Dr. Ambedkar brought forward his proposal I thought that the Government of India were desirous that this reform should be accomplished as speedily as possible.

I know, Sir, that this proposition would have been included in the Chapter relating to Directive Principles and would, therefore, not have been binding either on the Government of India or on any State and I wondered whether probably for that reason it was not included among the Directive Principles drafted by the Drafting Committee. But the matter having come before the House, and Dr. Ambedkar's proposition having been accepted, it is a matter of regret and deep regret to me that he should now seek to modify the proposition in such a way as to leave it to the discretion of the local Governments when the reform that we have all been insisting on for half a century should be carried out.

Dr. Ambedkar, while defending the deletion of the period, mentioned in his proposition, said that some people held the view that it might create the impression that nothing was to be done for three years. I wonder, Sir, whether he was satisfied with his own explanation. There is no one here so simple as to feel that the insertion of his proposal in the Draft Constitution would have made the Provincial Governments feel that they could rest comfortably for three years and that such action as they might choose to take might be taken only when this period was about to expire.

Had this proposition not been passed by the House yesterday the matter would have been quite simple. Frankly, I attach no value to any of the Principles included in the Chapter on Directive Principles, particularly as there is at the commencement of that Chapter an article saying that nothing in that Chapter can be judicially enforced. But the matter having been placed before, and acceped by, the House it is unfortunate that any change should be sought to be made in it. The impression that will be created now

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will be that the State is not serious in separating the judicial from the executive functions and that it means to take its own time in order to bring about the separation. Had this proposition not come before us, we could still have felt that this separation which is so important to the impartial administration of justice might be carried out within a reasonable period of time. But if the period of three years is now deleted and the matter is left entirely to the discretion of the authorities, the effect of this deletion will be very unfortunate. It is bound to create both in official and non-official circles the feeling that the reform is not considered to be of any great importance, that other reforms may easily be given precedence over it, and that it is merely an ideal to be kept in view by the authorities.

Therefore, I feel strongly that the House should not agree now to the amendment proposed by Dr. Ambedkar. Why should Dr. Ambedkar or any other person now try to bring about a change ? Frankly, I see no obvious reason in favour of such a step. This proposal will be one of the directive principles included in the Draft Constitution. The period of three years will not therefore be binding on any authority. If it is feared that it might not be within the resources of any province to introduce this reform within three years, the fact that the provision would not have been mandatory would have enabled that province to take a little longer time in order to separate judicial from executive powers. It would not have compelled any province regardless of its financial or administrative position to carry out the proposal in three years. I see no reason therefore why a change should be made. On the contrary, I see every reason why it should not be made. It would be most unfortunate, it would be most undesirable, it would be an act of public disservice, to give the public and the authorities the impression that this vital reform may be postponed indefinitely. I therefore oppose the amendment now proposed by Dr. Ambedkar and I hope that it will be strenuously resisted by the House.

The Honourable Pandit Jawaharlal Nehru (United Provinces : General) : Mr. Vice-President, the Honourable Member who has just spoken referred to the Government of India in this connection. May I, on behalf of that Government, explain the position and express my regret at the fact that the Government of India as such, jointly certainly and largely even individually, is not intimately connected with the proceedings of this House as it ought to and should be ? It should not be taken that any matter put forward here comes from the Government of India as such, although the Government is intensely interested in it naturally and would like to place their views before this House whenever it is possible. There are, if I may say so with all respect to this House, a number of matters which they have considered, on which the Government might have liked to place their views before this House, but owing to the stress of circumstances, owing to the fact that while this House is sitting matters of extreme moment are before the Government of India, whether in the domestic field or the international field, that many members of the Government are perhaps at the present moment more over-burdened with these problems and with work that even normally is so difficult, that it is their misfortune not to be able to give such time to these very important considerations of the Constitution as they ought to. I regret that on my own part, and I think the loss is entirely mine.

Coming to this present amendment, if I may again make some general observations with all respect to this House, it is this: that I have felt that the dignity of a Constitution is not perhaps maintained sufficiently if one goes into too great detail in that Constitution. A Constitution is something which should last a long time, which is built on a strong foundation, and which may of course be varied from time to time—it should not be rigid—nevertheless, one

should think of it as something which is going to last, which is not a transitory Constitution, a provisional Constitution, a something which you are going to change from day to day, a something which has provisions for the next year or the year after next and so on and so forth. It may be necessary to have certain transitory provisions. It will be necessary, because there is a chance to have some such provisions, but so far as the basic nature of the Constitution is concerned, it must deal with the fundamental aspects of the political, the social, the economic and other spheres, and not with the details which are matters for legislation. You will find that if you go into too great detail and mix up the really basic and fundamental things with the important but nevertheless secondary things, you bring the basic things to the level of the secondary things too. You lose them in a forest of detail. The great trees that you should like to plant and wait for them to grow and to be seen are hidden in a forest of detail and smaller trees. I have felt that we are spending a great deal of time on undoubtedly important matters, but nevertheless secondary matters—matters which are for legislation, not for a Constitution. However, that is a general observation.

Coming to this particular matter, the honourable speaker, Pandit Kunzru, who has just spoken and opposed the amendment of Dr. Ambedkar seems to me, if I may say so with all respect to him, to have gone off the track completely, and to suspect a sinister motive on the part of Government about this business. Government as such is not concerned with this business, but it is true that some members of Government do feel rather strongly about it and would like this House fully to consider the particular viewpoint that Dr. Ambedkar has placed before the House today. I may say straight off that so far as the Government is concerned, it is entirely in favour of the separation of judicial and executive functions (*Cheers*). I may further say that the sooner it is brought about the better (*Hear, hear*) and I am told that some of our Provincial Governments are actually taking steps to that end now. If anyone asked me, if anyone suggested the period of three years or some other period, my first reaction would have been that this period is too long. 'Why should we wait so long for this ? It might be brought about, if not all over India, in a large part of India, much sooner than that.' At the same time, it is obvious that India at the present moment, specially during the transitional period, is a very mixed country politically, judicially, economically and in many ways, and any fixed rule of thumb to be applied to every area may be disadvantageous and difficult in regard to certain areas. On the one hand, that rule will really prevent progress in one area, and on the other hand, it may upset the apple-cart in some other area. Therefore, a certain flexibility is desirable. Generally speaking, I would have said that in any such directive of policy, it may not be legal, but any directive of policy in a Constitution must have a powerful effect. In any such directive, there should not be any detail or time-limit etc. It is a directive of what the State wants, and your putting in any kind of time-limit therefore rather lowers it from that high status of a State policy and brings it down to the level of a legislative measure, which it is not in that sense. I would have preferred no time-limit to be there, but speaking more practically, any time-limit in this, as Dr. Ambedkar pointed out, is apt on the one hand to delay this very process in large parts of the country, probably the greater part of the country; on the other hand, in some parts where practically speaking it may be very difficult to bring about, it may produce enormous confusion. I think, therefore, that Dr. Ambedkar's amendment, far from lessening the significance or the importance of this highly desirable change that we wish to bring about, places it on a high level before the country. And I do not see myself how any Provincial or other Government can forget this Directive or delay it much. After all, whatever is going to be done in the future will largely depend upon the sentiment of the people and the future Assemblies and Parliaments that will

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meet. But so far as this Constitution is concerned, it gives a strong opinion in favour of this change and it gives it in a way so as to make it possible to bring it about in areas where it can be brought about—the provinces, etc.—and in case of difficulty in any particular State, etc., it does not bind them down. I submit, therefore, that this amendment of Dr. Ambedkar should be accepted. (*Cheers*).

Dr. Bakshi Tek Chand (East Punjab: General) : Mr. Vice-President, Sir, I rise to lend my wholehearted support to the amendment which has been moved by Dr. Ambedkar today. The question of the separation of executive and judicial functions is not only as old as the Congress itself, but indeed it is much older. It was in the year 1852 when public opinion in Bengal began to express itself in an organised form that the matter was first mooted. That was more than thirty years before the Congress came into existence. After the Mutiny, the movement gained momentum and in the early seventies, in Bengal, under the leadership of Kisto Das Pal and Ram Gopal Ghosh, who were the leaders of public opinion in those days, definite proposals with regard to the separation of judicial and executive functions were put forward. Subsequently, the late Man Mohan Ghosh took up this matter and he and Babu Surendranath Bannerji year in and year out raised this question in all public meetings.

When the Congress first met in the session in Bombay in 1885, this reform in the administration was put in the forefront of its programme. Later on, not only politicians of all schools of thought, but even retired officers who had actually spent their lives in the administration, took up the matter and lent their support to it. I very well remember the Lucknow Congress of 1899 when Romesh Chunder Dutt, who had just retired from the Indian Civil Service, presided. He devoted a large part of his presidential address to this subject and created a good deal of enthusiasm for it. Not only that; even retired High Court Judges and Englishmen like Sir Arthur Hobhouse and Sir Arthur Wilson, both of whom subsequently became members of the Judicial Committee of the Privy Council, lent their support to this and they jointly with many eminent Indians submitted a representation to the Secretary of State for India to give immediate effect to this reform.

In the year 1912, when the Public Service Commission was appointed, Mr Abdur Rahim, who was a Judge of the Madras High Court and was for many years the President of the Central Legislature, appended a long Minute of Dissent and therein he devoted several pages to this question.

Therefore, Sir, the matter has been before the country for nearly a century and it is time that it is given effect to immediately. One of the Honourable Members who spoke yesterday, observed that this matter was of great importance when we had a foreign Government but now the position has changed, and it may not be necessary to give effect to it. Well, an effective reply to this has been given by the Honourable the Prime Minister today. He has expressly stated that it is the policy of the Government, and it is their intention to see that this reform is given immediate effect to.

Not only that, Sir, another objection was raised that on financial grounds it will not be feasible to separate the judiciary from the executive. Well, to this, again, an effective reply has come from the province of Bombay. Soon after the Congress Government assumed office in 1946 in Bombay, it appointed a Committee to look into this question. It was presided over by a Judge of the Bombay High Court and consisted of eleven other Members. It submitted its report on 11th October 1947. I have got a copy of that report in my hands. I do not think it is necessary to give detailed extracts from that report. This Committee has come to the unanimous conclusion that the separation of judicial and executive functions was a feasible and practical proposition. So far as the financial aspect was concerned, they examined the matter in great detail and

have estimated that the additional expense will be about ten lakhs of rupees a year. From this you will find that the proposition is such that it is not financially impracticable. It is feasible. The Honourable the Prime Minister of Bombay who happens to be here today tells me that his Government is going to implement the scheme at the earliest possible opportunity.

The Honourable Shri B. G. Kher: I confirm it.

Dr. Bakshi Tek Chand: I am glad to hear that he confirms it. This gives the quietus to these two objections which have been raised, that because of the changed circumstances, because we have attained freedom, it is no longer necessary and that the financial burden will be so heavy that it might crush provincial Governments. Both these objections are hollow.

One word more I have to say in this connection and that is, that with the advent of democracy and freedom, the necessity of this reform has become all the greater. Formerly it was only the district magistrate and a few members of the bureaucratic Government from whom interference with the judiciary was apprehended, but now, I am very sorry to say that even the Ministers in some provinces and members of political parties have begun to interfere with the free administration of justice. Those of you, who may be reading newspaper reports of judicial decisions lately, must have been struck with this type of interference which has been under review in the various High Courts lately. In one province we found that in a case pending in a Criminal Court, the Ministry sent for the record and passed an order directing the trying Magistrate to stay proceedings in the case. This was something absolutely unheard of. The matter eventually went up to the High Court and the learned Chief Justice and another Judge had to pass very strong remarks against such executive interference with the administration of justice.

In another province a case was being tried against a member of the Legislative Assembly and a directive went from the District Magistrate to the Magistrate trying the case not to proceed with it further and to release the man. The Magistrate who was a member of the Judicial Service and was officiating as a Magistrate had the strength to resist this demand. He had all those letters put on the record and eventually the matter went up to the High Court and the Chief Justice of the Calcutta High Court made very strong remarks about this matter.

Again in the Punjab, a case has recently occurred in which a Judge of the High Court, Mr. Justice Achru Ram, heard a *habeus corpus* petition and delivered a judgment of 164 pages at the conclusion of which he observed that the action taken by the District Magistrate and the Superintendent of Police against a member of the Congress Party was *mala fide* and was the result of a personal vendetta. These were his remarks.

In these circumstances, I submit that with the change of circumstances and with the advent of freedom and the introduction of democracy, it has become all the more necessary to bring about the separation of the judiciary from the executive at the earliest possible opportunity.

My honourable and respected friend, Pandit Kunzru, thinks that the deletion of the three years limit has got some sinister motive behind it. I myself was originally in favour of such a time limit being fixed, but for the reasons which have been so lucidly put before this House by the Honourable Prime Minister, it is neither desirable nor necessary. A time limit of this kind may, in certain cases, defeat the very object in view. I have mentioned the case of Bombay where they are going ahead with the separation. I am told that the Madras Government had also appointed a similar Committee which has reported on the same lines as the Bombay Committee. Thus we have got two of our principal provincial governments taking action in this matter. In the Punjab, a scheme

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for separation of the judiciary from the executive was prepared many years ago by a Committee appointed by the Government of the united Punjab. I have no doubt that in the East Punjab also steps will be taken in this direction. At the same time we have to take the case of the newly formed administrations and Indian States who are merging or forming Unions amongst themselves and are States for purposes of this clause. Some of these newly set-up administrations may require a longer time limit than three years. Therefore, Sir, fixing a time limit would not be a proper thing.

For these reasons I support the amendment which has been moved by Dr. Ambedkar today.

Shri Lokanath Misra: (Orissa: General): Sir, we are all beholden to Honourable Pandit Nehru for his frank and straight advice on this matter, because as I see and as I have heard the proceedings of the House, for some days, everybody is trying to put in changes in the Constitution as if it is an election manifesto. Now, Sir, as a lawyer I know the difficulties of the lawyer, the difficulties of the litigants as also the difficulties of the law courts. My first point is this that we are perhaps going to put in this article in the Directive Principles for the better administration of justice, and to that end the article that we are going to put in would not serve any purpose because for better administration of justice, we want first of all just laws. Unfortunately due to our slavery, we have so many bad laws that, however justly they may be administered, they cannot give you justice. Therefore, we must have just laws. I am sure that in the new order we will frame our laws in such a manner that their administration would give us justice. Apart from that, it is said here that there must be separation of the judiciary from the executive. Perhaps we do not thereby mean that the judiciary should not be executive and the executive should not be judicious. I should rather say and it is my experience that when the executive works, it becomes injudicious and when the judiciary works, it becomes too dilatory. Therefore, while separation of the judiciary from the executive there must be, we must at the same time make people know and make the judicial officers and executive officers know that when an executive officer executes, he must do it judiciously and when a judicial officer or a judge executes, he must do it in time. I will give you one example. Sir, in my own province of Orissa, we recently passed a law called the Tenants Protection Act. We passed it in all good sense and we know that it will do people good, but although a year has passed, I have found that it has never been put into practice for the simple reason that the law of evidence is so defective, the law of enquiry is so defective and the judges are so half-hearted. Even though the Act has been passed, it has given no good. Therefore, the mere separation of the judiciary from the executive will not serve our purpose. We require something more.

Then again, Sir, I should say another thing which we require for the proper administration of justice. If we expect any good from the separation of the judiciary from the executive, we must be sure of one thing. The profession of law, being a private business, does not really help justice. It feeds on fat fees and forged facts. Lawyers may be as much officers of the Courts as the judges but they have no prestige unless they earn fat fees. Of course for this the lawyers may be to blame to some extent, but, Sir, the lawyers have to earn their living. They have to win their cases and to win their cases they have to formulate evidence and do all sorts of things, and unless they win one or two cases, they have no chance. Therefore I say that unless the professions of law and medicine become a State business, you

cannot have proper administration of justice either for rights or for health and disease. That means that just as government pleaders are engaged, attorneys are engaged, the profession of law should be paid and controlled by the State to the extent that they need only help justice and not have to promote perjury or forgery to win a case and please their clients. But now the fact remains that this side wins or that side loses, but in all sides truth and justice are lost.

Mr. Vice-President: Are you supporting or opposing the amendment?

Shri Lokanath Misra: I am supporting the amendment in principle. I was just going to say that it is simply a claptrap device. If we are wholeheartedly for the administration of better justice, mere separation of the judiciary from the executive would not do. Sir, I therefore beg to submit that if we are sincere in our desire for better administration of justice, not only should the judiciary be separated from the executive but the State should also see that law becomes so simple and so few and at the same time so intelligible to the masses that law is nothing far away and frightful and better administration of justice becomes a reality and does not remain a farce.

(Amendments Nos. 1010 to 1012 were not moved.)

Mr. Vice-President: We have had a reasonable amount of debate, and I would like to put the matter to vote.

Shri H. V. Kamath: (C.P. & Berar: General): It is a very important matter that is before the House.

Mr. Vice-President: I am afraid there are many more speakers. I would like to accommodate them, but it is now impossible. I am sorry. I shall put this amendment to vote.

Mr. Vice-President: The question is:—

That after article 39, the following new article be inserted:

"39-A. The State shall take steps to separate the judiciary from the executive in the public services of the State."

The motion was adopted.

Mr. Vice-President: The question is:

That article 39-A stand part of the Constitution.

The motion was adopted.

Article 39-A was added to the Constitution.

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

That after article 39, the following new article be inserted and the rest of the articles be renumbered:—

"40. It shall be the duty of the State to protect, safeguard and preserve the places of worship such as Gurdwaras, Churches, Temples, Mosques including the graveyards and burning ghats."

Today, we are framing the constitution of our great country and the eyes of every individual of our great country are fixed on this Assembly to see what we are doing and what we are granting for them. At this important and historical period, Sir, I have moved my amendment, a simple amendment by which I want that the State should be responsible for the protection, safeguard and preservation of religious places of worship for all communities of the Indian Nation. There was a time when this country was ruled by the Englishmen, by the foreigners through a constitution framed by them,—of course a constitution which was foreign to us. In that Constitution, of course, no such idea was incorporated, for the simple reason that the Britisher had the policy to play a game at the cost of the different communities of the Indian Nation. But, now we see that the country is ours, the State belongs to us and, of course, we have a right to claim the protection of our religious

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places of worship. Unfortunately, Sir, the Father of the Nation is not amongst us today; otherwise I can say without any fear of contradiction that I must have had his sacred consent for the acceptance of this amendment. Anyhow, I appeal to every individual member of the House and especially to every member of the Congress that they will give strong support for the acceptance of this amendment and I also appeal to the Honourable mover, Dr. Ambedkar, to give due consideration to it.

Sir, only yesterday, the House was bold enough to give effect to prohibition. The House was bold enough to give protection to the cows of our country and I hope that the House will be still bolder to give protection to the religious places of worship.

Sir, with these few words, I appeal again to every honourable Member of this House to give support to this simple and very light amendment.

Lastly, I would say that this amendment is the only amendment which would show one of the best qualities which can be found in this whole constitution for a secular state. With these few words, Sir, I move.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Mr. Vice-President, Sir, it is certainly the duty of the State to protect all places of public worship such as Gurdwaras, Churches, Temples, Mosques and also graveyards and burning ghats. The general law of the land—the penal law—has made ample provision for this. The Honourable mover of this amendment wants three things to be done and they are to protect, safeguard and preserve. So far as "to protect and safeguard" are concerned, it is the duty of the State to protect all places of public worship whether of property, whether belonging to an individual or a community. Particularly, places of public worship will be protected and safeguarded against all invasion, against all aggression and any molestation. That is one of the fundamental rights that is contained in the earlier part, Part III. Therefore, it need not be a directive here. But so far as the preservation of the places of public worship is concerned, there is the difficulty. We will assume that a temple is abandoned by the community which was erstwhile utilising that for public worship. Is it the duty of the State to preserve that, though it may have been a place of public worship? Article 39 provides that it shall be the obligation of the State to protect every monument or place or object of artistic or historic interest. These it will certainly preserve. 'Preserve' includes maintaining or keeping it in the same condition. If every temple and every gurdwara is to be maintained, which may be abandoned by a community, then it will be imposing an unnecessary obligation on the State and diverting the tax-payers' money to purposes which are not legitimate charges upon it. On the other hand, it is the duty of the community to maintain and preserve every gurdwara and temple. All that can be expected of the State is that it should see that there is no molestation, it should protect them against all aggression. That is all that can be expected and for that there is ample provision in the Fundamental Rights and also in the general Criminal Law. On the whole, I am sorry to oppose this amendment, however much I might like that all these places of worship to whichever community they might belong must be protected. They must be safeguarded. I am equally one with him that places of God ought not to be molested. There is ample provision already. Therefore, this amendment need not be accepted.

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept the amendment.

Mr. Vice-President : I will now put the amendment to vote.

The amendment was negatived.

Article 40

Mr. Vice-President: The motion before the Houseis:

That article 40 form part of the Constitution.

There are a number of amendments which I shall read one after the other.

(Amendments Nos. 1016 and 1017 were not moved.)

Mr. Vice-President : No. 1018. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I understand Mr. Kamath is moving an amendment.

Shri H. V. Kamath: I shall be moving my amendment after Dr. Ambedkar has moved his.

The Honourable Dr. B. R. Ambedkar: Sir, I move: "that for the existing article 40, the following be substituted:—

"40. The State shall—

(a) promote international peace and security;

(b) seek to maintain just and honourable relations between nations; and

(c) endeavour to sustain respect for international law and treaty obligations in the dealings of organised people with one another."

Sir, this amendment merely simplifies the original article 40 and divides it into certain parts separating each idea from the other so that any one who reads the article will get a clear and complete idea of what is exactly intended to be covered by article 40. The propositions contained in this new article are so simple that it seems to be super-arrogation to try to explain them to the House by any lengthy speech.

Sir, I move.

Mr. Vice-President : There are certain amendments to this which I am calling out. No. 74 Mr. Sarwate.

Shri V. S. Sarwate (United States of Gwalior-Indore-Malwa-Madhya Bharat) : Mr. Vice-President, Sir, I beg to move an amendment to this amendment. My amendment stands thus :

"That in amendment No. 1018 of the list of amendments, in article 40, after the words "The State shall—" and before sub-clause (a), this new clause be inserted and the existing clause be renumbered accordingly :—

(a) foster truthfulness, justice, and sense of duty in the citizens;"

Sir, the House may note that this amendment seeks to embody the characteristics of the Gandhian ideology. Mahatmaji led our struggle for independence with these characteristics and won it. The House may further note that the amendment begins with truthfulness. I need hardly point out that in Mahatmaji's view, truth was God and if I may be permitted to say so, I think he attached more importance to truth than to non-violence. There may be exceptions to non-violence; there is none to truth. Those who do not believe even in God certainly do believe in truth. Society is based on truth. Therefore, he styled his autobiography not as Experiments after non-violence, but as Experiments after truth. Therefore, I commend to this House this amendment which embodies these characteristics.

I would anticipate certain objections that may be raised to this. The first objection may be that this is too general and too vague to have any practical effect. I would submit that if this be the objection, I stand in honourable company, because, the rest of the clauses probably may be subject to the same objection. I may further point out that if need be, concrete steps which

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could be taken to bring into effect this amendment can be suggested. But, that is not necessary. I believe after all the principles given in this Chapter are of such a nature that they are fundamental, that they are basic, and that efforts to implement them to the fullest extent would have to be taken as long as society goes on. That is exactly the description which may be applied to this amendment also. I would say only a few more words, Sir. I would submit that in the whole of the Constitution as it stands, one would be painfully surprised that there is absolutely nothing which shows one way or the other and which sheds light on the fundamental principles of the Gandhian philosophy.

Another objection that may be taken possibly is this : this need not be said because such moral principles are not laid down in a Constitution. I would very respectfully submit that it is not at present the model which is followed in Constitutions. For instance, in the Constitution of the U.S.S.R., in the first Chapter which gives the political foundations and economic foundations, they have given the famous sentence of Marx : "To those who shall need, sufficient shall be given; to this every man must work according to his ability; every man must get according to his needs."

They have given in this draft Constitution the fundamental ideas which move you to the adoption of the Constitution and accordinly, I would commend this to the good sense of the House. I am sure that my honourable Friends and colleagues and others, those who have followed Mahatma Gandhi in this struggle, would like to have in this Constitution something which he had given to us, and which he has left for us ever to remember and follow.

Shri H. V. Kamath: Mr. Vice-President, Sir, at the outset, may I say that a single amendment which I had given notice of has been split up into three different amendments, numbers 82, 83 and 84. I am not saying this as a carping critic; but I find that it would have been better if this had appeared as a single amendment as I had sent it. I know our office is heavily overworked and I appreciate that they are doing very well in the face of the heavy odds which they are contending with. I shall read it as one amendment by your leave. It will read thus.

Mr. Vice-President: I understand that they have been broken into three amendments because you seek to make alterations in three different places—not continuously. That is a technical explanation for a technical objection.

Shri H. V. Kamath: If the three amendments are taken separately and not together, they will have no meaning. Anyway that is a minor objection. I do not want to press it. With your permission, Sir, I would like to read it as one amendment. Sir I move—

"That in amendment No. 1018 of the List of Amendments in article 40, after the word 'shall' the words 'endeavour to' be inserted, in clause (b) the words 'seek to' be deleted; in clause (c) the words 'endeavour to' 'be deleted".

So that if this amendment be accepted by the House the amendment of the Drafting Committee will read as follows:—

"The State shall endeavour to (a) promote international peace and security; (b) maintain just and honourable relations between nations; and (c) sustain respect for international law and treaty obligations in the dealings of organised people with one another."

This amendment seeks only a slight structural change in the amendment brought forward by Dr. Ambedkar so as to bring out or indicate the directive character of the principle embodied in article 40. It is recognised and it has been always India's endeavour to promote international peace and security and to enhance respect for international law and treaty obligations. I think, Sir, and I am sure the House will agree with me when I say that

India with her ancient cultural and spiritual heritage and her tradition—centuries old tradition of non-aggression—is best qualified to enhance respect for international law and treaty obligations. It is common knowledge that within the last thirty years regard for international law and treaties had sunk to a low level and treaties are regarded as mere scraps of paper. I hope that in the new world in which we are living today and in which we are playing and are going to play such a vital part, we will be able to bring about a vital change in international relations, so that at an early date we will have really one world Government or one Super-State to which the various nation-States of the world will have surrendered part of their sovereignty and to which all these nation-States will owe willing allegiance and will accept the Sovereignty of this Super-State. I do not wish to add anything more but I will only content myself with saying that in these days there is a tendency to regard international relations as not of paramount importance, but that tendency ought to be curbed, and we ought to give more attention to international affairs so that the world can really become one free world.

My friend Mr. Sarwate's amendment does not deal with the subject contained in article 40. Mr. Sarwate will see that article 40 deals with international relations and the amendment that he has moved is something which deals with the qualities of citizens in India. I do not think that is really relevant to the article under consideration and I think it cannot find a place here. Sir I move my amendments Nos. 82, 83 and 84 as one amendment to Dr. Ambedkar's amendment No. 1018.

Mr. Vice-President: Prof. Shibban Lal Saxena. Yours is the same as Mr. Kamath's.

Prof. Shibban Lal Saksena: Sir, I do not move.

Mr. Vice-President: Amendment No. 1019—Mr. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move—"That for article 40, the following be substituted:—

"40. The Federal Republican Secular State in India shall be pledged to maintain international peace and security and shall to that end adopt every means to promote amicable relations among nations. In particular the State in India shall endeavour to secure the fullest respect for international law and agreement between States and to maintain justice, respect for treaty rights and obligations in regard to dealings of organised peoples amongst themselves."

Sir, in commending this motion to the House I would begin by recognising at once that, as far as the surface goes, there seems to be not much difference in the ideals sought to be attained by my amendment and those in the wording of article 40 as it stands. The difference may appear to be the difference of wording only. I submit, however, that though the difference seems to be a difference, superficially judging, of wording only, to me at any rate the difference in wording seems to conceal a difference of approach, a difference of out-look, perhaps also a difference in intention. I would urge, Sir, that we should leave no room for doubt about this matter. I will point out for instance that the original clause as it stands requires—

"That the State shall promote international peace and security by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and respect for treaty obligations in the dealings of organised people with one another".

Now I have emphasised in this connection that by such articles in our Constitution, we want to convey, not merely some vague promise or endeavour to promote, or even an obligation to promote international peace and security etc. I want, first and foremost, the State in India to be pledged to promote international peace and security.

[Prof. K. T. Shah].

The recent wrangles that we have seen in the International Security Council of the U.N.O., in regard for instance, to disarmament, the entire history in fact for the last twenty years or so of the problem of disarmament, would go far to convince any impartial observer that the powerful nations of the world do not really intend to disarm. They do not desire peace and security for peoples, but only for their friends and associates, and of course, for themselves. Now so long as you continue to indulge in a race between yourselves as to who shall disarm first, it is unlikely that you would be finding any great progress in an all-round disarmament, as the first step to securing international peace. I would submit that somebody will have to make a beginning and such a beginning cannot be made unless an open, frank declaration of policy, pledging a nation unreservedly to peace, to the maintenance of international law and friendship is given. Unless that is given, it would be impossible to make a real beginning in the task of all-round disarmament and securing and maintenance of peace.

We are, I admit, living today in a heavy atmosphere of all-round distrust and suspicion. And in that atmosphere, it is impossible to find people in any country willing to expose their own national security and independence, by taking the first step towards real disarmament. For us, however, in this country, I venture to submit to this House, there have been the teachings and the example of our great leader who made Non-violence, most clearly and unmistakably the rule of conduct, not only for individuals but also for nations. That non-violence was not, as I am afraid some people have been inclined to believe, a mere matter of, shall I say, political chicanery or practical expediency. It was a matter of religious belief, at least with him who preached it. It, therefore behoves us who claim to be following in this footsteps, and who claim to uphold his teachings, that this State at least, of which he has been proclaimed the father, should be pledged from the outset to the maintenance of peace.

May I, in this connection recall to this House the very categoric declaration which Mahatma Gandhi made at the time of the Round Table Conference which he attended. He said that if he got Swaraj, if the Congress was master in this country, one of the first things he would advise it to do would be to disband the army and the police, and anything else which savoured of violence in the organization of the Indian State. I do not know whether you would be prepared at this time, and living under the circumstances in which we are living, to carry out literally such a desire as that. But I know this, that unless we make a beginning, and pledge ourselves to the maintenance of peace, and to ensure security to all countries, we shall be making these professions sound too hollow to be believed. We would then indeed be in the good company of people who make loud professions for the maintenance of peace, but at the same time go on arming themselves to the teeth, making up piles of atomic bombs and threatening each other at every crisis, which is of their own creation, so that peace seems to be as distant as ever, and certainly not as permanently established as one would desire it to be.

There are other circumstances, Sir, which also incline me to place this categoric declaration before the House, and desire that it be incorporated in our basic Constitution. The possibility merely of promoting peace and respect for international law in the world today may involve us in those combinations of nations which are taking place whereby rival imperialisms seems to be arrayed against each other. These combinations involve each part, each associate and each ally in their own designs for which we may have no taste. It has, in the past history, been our common complaint, that we have been dragged against our will, without our consent, into the imperialistic, aggressive wars of Britain. Now, when we are free, now when we may claim to

shape our own foreign policy, and determine our relations with other people ourselves, would it not be as well for us to declare that we at least from the start, shall pledge ourselves to peace that we as a people will take an oath whereby for no reason shall we resort to arms, to settle our differences with other countries, and with other peoples. If we are prepared to do so, then I do not see why we may not accept the amendment I am placing before the House.

Sir, reasons less idealistic than those I have so far referred to also indicate a course which I have now proposed. We are not only comparatively very poor in the matter of armaments, we are not only backward in all the material equipments that ensure some success in modern warfare, but we have not, I venture to think, that industrial background, that background of very highly developed modern mechanical or chemical industry or the scientific technique which alone is an assurance for securing adequate armament from our own resources, and so a chance for victory in the end, and for making an effective contribution for the maintenance of peace, at least for those, at any rate who believe in securing peace by piling up armaments.

We have been, I see, buying second-hand materials, like the cruiser that was ready for the scrap heap which we are supposed to have bought recently, or planes or other arms. Very often these weapons and vehicles are nothing more than what is designed for the scrap heap by their original owners, and these are unloaded upon us, and I do not know at what price. In any case, what I mean to say is that we are completely dependent, for our initial supplies of such material, upon outside producers.

And Sir, the mischief of this state of affairs does not end there. Modern armaments are so highly specialised, parts of these weapons and vehicles and instruments are so extremely standardised and inter-changeable, that once you begin to get your supplies of materials for warfare from a particular source, we shall be bound for ever to that particular source. If you change, the armament material already acquired will prove futile and useless.

Under these circumstances, for us to get involved in any particular combination, which compels us to model our armies, navies and air-forces upon the organizations and equipments of other places, and by keeping pace with them, so to say, in the race for armaments and ever more armament, would to my mind, be to spell disaster, and continued dependence in a most vital particular upon others which we should do our best to avoid.

The one thing that seems to me to be the best guarantee for avoiding any complications of this kind is here and now, to take a vow, so to say, pledge ourselves, as a people against any form of warfare, and for ever stand to maintain and uphold peace and international security for all countries of the world including our own. This, Sir, is not a matter of verbal profession only. I hope nobody would think that this implies mental reservation which, I for one, would utterly denounce. This is an expression as much of an idealism that has governed our actions and policies so far, as also of material consideration which I for one cannot omit placing before the House in commending this motion to it.

(Amendments No. 1020 to 1024 were not moved.)

Mr. Vice-President: Amendment No. 1025 in the joint names of Shri Damodar Swarup Seth and Shri Mohanlal Gautam.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I move:

That in article 40, the following words be added at the end:

"It shall also promote political and economic emancipation and cultural advancement of the oppressed and backward peoples, and the international regulation of the legal status of workers with a view to ensuring a universal minimum of social rights to the entire working class of the world."

[Shri Damodar Swarup Seth]

Sir, article 40 so far as it goes appears to be appropriate and good, but unfortunately it does not go far enough. While it rightly lays stress on promotion of international peace and security, it sadly ignores some of the basic causes which generally lead to conflagration and consequent devastation and destruction of the world. In this article nothing has been said about political and economic emancipation of the oppressed and backward people, nor has anything been said about the ensuring of minimum of social rights to the entire working class of the world through international regulation of their legal status.

It is clear that as we see, unless the basic causes of breach of peace and security are removed, it will not be possible to maintain peace, national or international, by simply arriving at an understanding between nations and nations. The continuance of the oppressed and backward people in this world has generally been a great menace to world peace. It offers temptation and encouragement to the exploiter and the blood-sucker in his nefarious job of exploitation and blood-sucking. It extends the hands of capitalism and nourishes imperialism and colonialism, paving the way for regional and international warfare.

So far as the working class is concerned, we see that it has not yet been able to secure even the universal minimum of their social rights. The workers of the world even today are the salt of the earth; it is they who produce wealth, it is they who make the world worth living in, but we see that they are nowhere living in a comfortable position. We see everywhere in this world that millions and millions of them are being changed into beggars without any homes or hearths. It is a point worth consideration that, when the workers who produce all the wealth of the world are not in a position to maintain themselves, it is difficult to consider who else will be able to live. I ask in all humility, when the salt has lost its savour wherewith is it to be salted? When the workers of the world die, who else will live in this world? India was till the other day an oppressed nation and I wonder if even today it is counted amongst the progressive people. It is therefore essential that now when we are making the Constitution of free India we, both in national and international interests, lay true emphasis on poiltical and economic emancipation of the oppressed and backward classes and on ensuring the universal minimum to the entire working class of the world through international regulation of their legal status the lack of which so long has been causing breaches of peace and security. Unless that is done, Sir, I am afraid any efforts to promote peace and security will not be possible. I therefore hope that my amendment which is apparently very innocent and harmless will be accepted by this House ungrudgingly.

Prof. B. H. Khardekar (Kolhapur): Mr. Vice-President, Sir, I am here to support the amendment moved by Dr. Ambedkar, and to say a few words in general on article 40. I have promised you, Sir, to be very brief and I may say I cannot help being relevant.

In supporting the article, I wish to say a few words about two or three things: The position of international law today in the light of recent history; the relations between the different nations, and the role or the part—the very great part—that our country has to play in regard to the different nations.

Mr. Austin, a great jurist, says that there is no such thing as international law at all—if there is anything it is only positive morality. Very briefly he gives three reasons: that there is no legislature, no judiciary, no executive. In saying that there may be positive morality I think even there he is wrong. If there were to be morality amongst nations, well, we would not have all that has been going about. If there is a morality amongst nations today it is the morality of robbers. If there is any law today it is the law of the jungle where

might is right. That is why I think the part that India has to play and has played, is covered by Dr. Ambedkar's amendment which has not only verbal elegance to recommend it but also the intention that the country should take to certain actions if necessary. The part that India is to play is certainly very important because foundations of international morality have to be laid and only a country like India with its spiritual heritage can do it.

In support of Austin we find jurists like Gray. On the other hand, there are some international jurists like Hall, Westlake, Oppenheim and others who, because of their excessive zeal and anxiety to give international law a name and a shape, argue almost feverishly—somewhat childishly, if they are to be summarised—that is what they appear. Their contention is that it is very necessary to have international law and therefore we have international law. I might make it appear stupid by saying, "I think it is necessary for me to have a thousand pounds in my pocket; and if I think that I have a thousand pounds in my pocket, my place would be in the lunatic asylum". Their wishes are father to their thought, and if wishes were horses beggars would ride; if there were to be an international law, peace would prevail. But that is unfortunately not the position. Mr. Brown, Jennings and others sit on the fence and take the middle course. They say that international law is neither a panacea nor a chimera. It is a thing in the process—it is growing, it is becoming. I subscribe to a certain extent to this view that if nations, and particularly if India were to lead the way, we may have some sort of international law inspite of all the chaos that we see today. Some efforts made so far I may refer to, within a couple of minutes (that I have got), in giving certain substance to the theories of the international jurists. The League of Nations, as you know, was an inglorious failure, unfortunately. Why? Because it was more or less a league of robbers. I met a friend of mine, who explained to me the reasons why the League of Nations failed so ingloriously. His father had told him: The headquarters of the League were situated in Switzerland at Geneva; salubrious climate, majestic Alps, sumptuous Swiss food, appetising women, exotic music and the hall for debate was something that gave sufficient exercise to the vocal organs—and the League came to nothing. It could not come to anything, because it was an institution meant to perpetuate a wrong that was perpetrated by the Treaty of Versailles. After the League, its successor is the United Nations. This also seems to be a weak, pusillanimous and impotent agency. But our Prime Minister has done a very wise, very diplomatic and morally also a very sound thing by lending his support to this weak agency. An agency which is meant for good things must be strengthened and I think the Article that we have in the directive is meant to be directed towards that particular end. India, as I said, has a spiritual heritage. The mission of India is the mission of peace. Right from Ram Tirth and Vivekananda down to Tagore and Gandhiji, we have been carrying on this mission of peace. Non-violence is in the soil and in the heart of every Indian. It is not something new. Gandhiji, if he has done anything, has very much strengthened it. Throughout history, it is not because we have been weak but because it has been in our blood that we have always been peaceful, never aggressive. Therefore, it is in keeping with our history, with our tradition, with our culture, that we are a nation of peace and we are going to see that peace prevails in the world.

Now, Sir, I have some doubts about certain parts of the article that we are to be friends of all. But common sense and experience teach us that those who are friends of all sometimes have no friend at all. Therefore, when we want ends and means to be pure, we should make our policy somewhat clear. To Russia, we may and should say "we accept and we appreciate your aims and ideals, but your means are rather crude, sometimes they are very doubtful." To England and to America, we must say: "We have very many misgivings about your aims and ideals. Your means are very very polished, very very civilised".

[Prof. B. H. Khardekar]

So we should show a certain indication in our foreign policy and when we have men like Pandit Nerhu at the helm of foreign affairs and when the foundations of peace and non-violence have been laid down by the Father of the Nation, this country need not despair of its future; it can even hold out a future to the whole of the world.

Shri Biswanath Das (Orissa: Geeral): Sir, I stand to support the motion of the Honourable Dr. Ambedkar which has given a clear lead to the country. The amendment which is to come as article 40 reiterates our policy and position regarding India's international relations. While the contribution of the West to international relations and promotion of international security was first the Hague Conference and secondly the League of Nations and now, thirdly, the United Nations Organisation, India even when she was in fetters and bondage, had her mighty contribution, not in the shape of influence of prowess or wealth, but by bringing her thought into the field of international concept,—the mighty, intellectual and moral influence of a Tagore and a Gandhi who taught nothing short of international amity, honourable and open relations between nations and countries. This is a mighty contribution to the betterment of international relations in a world that is out for cut-throat competition in armament; and soon after, is bound to come into the field keen economic rivalry. This being the position today, it is difficult for India to decide what her international relations are going to be and what part she is going to play in the world. The motion of my Honourable friend Dr. Ambedkar not only lays down what we ought to do and what we have to do, but also states the limitations within which India is to play her role in international transactions with other nations. The role is honest; the role is upright; the role is open. India, under the leadership of Mahatma Gandhi, our great leader, has learnt to take to such open course of action. There is nothing hidden in our ways. There is nothing secret in our ways. That explains the difference between the course of action adopted by other States from those adopted by India.

Coming to our relations either present or future with the United Nations Organisation, we see that that Organisation is divided into blocs. We have stated in the clearest terms that we belong to no bloc, despite the fact that we are a young nation, a new born free state, with feeble power though our resources are mighty and have yet to be developed. In this strife between two big blocs, ours is a difficult and unenviable position. We have not to be in *blocs* and we have to fend for ourselves for our own defence and for our own security. Though our respected leader, the Honourable Pandit Jawaharlal Nehru, has told us that he found no theocracy or no communal tendency in the near and Middle East States, we have the latest announcements in the Press that the very slogan of "Islam in danger" is bringing most of the Muslim Arab countries together against us. That is one difficulty. Our neighbour, the Pakistan State, always considers us unfortunately as enemy No. 1 despite the fact that we agreed to bring Pakistan into existence so as to bring about peace and amity between us, the two states. She regards us however like an enemy and raises the cry 'Islam in danger' which brings Muslim countries together.

Secondly, Sir, despite the unanimity of purpose disclosed by the united action of representatives from Pakistan and India, the fact remains that the Muslim countries gave the go-by to India when the South-West African question was discussed by the U.N.O. This leads us to the belief that they are made to play the game of the Britisher, the unseen hand of Britain and the unseen hands of South Africa and Britain together. These explain our difficulty and helplessness in the international sphere. I have already stated that our leaders have emphatically announced that we do not belong to any bloc. We are not helped by any bloc and attempts are even being made by the different blocs not to do anything which helps India on her way to progress. That being the

position I find little reason for my friend Seth Damodar Swarup coming forward with an amendment calling upon the Constituent Assembly to accept a position which is least fair to the best interests of the country. Sir, we are called upon to free the politically and economically exploited people of the world. Where is the necessary force to back this great programme of freeing the politically and economically exploited races of the world today in India? It might be that after some time India will be their beacon light and focus attention on the exploited countries of the world. That is our hope. But Heaven knows how long it will take for us to be able to do it. It is in the hands of God. I would therefore beg of Mr. Damodar Swarup and appeal to him to withdraw his amendment which expresses the point of view of the Socialists. I support the amendment moved by Dr. Ambedkar which clearly and fully brings out the aspirations of India. I fully support it.

Shri B. M. Gupte (Bombay: General): Sir, I rise to support the amendment moved by Dr. Ambedkar. It is really a matter for sincere gratification that the cardinal principle of our foreign policy that has been laid down in this article as proposed is the promotion of peace, international peace and security. There is no doubt it is a very desirable thing. All the world over, in the deep recesses of the human heart there is a passionate longing for peace and Mahatma Gandhi was the embodiment of this yearning for peace. After the devastation caused by two world wars, the world is again threatened with a third war and the world is anxious to avoid that catastrophe. Personally it would have given me greater satisfaction if, instead of merely laying down our objective as the promotion of peace, we could have devised and emphasised some method for the promotion of peace. I think Mahatma Gandhi has suggested one method. He laid down the principle of arbitration for the settlement of labour disputes. That principle could be very well extended to other departments of life and also to international disputes. I think it would have been better if we had provided that arbitration should be resorted to if we want to avoid war. We should hold out some substitute for war. Naturally there cannot be a better substitute than arbitration. Therefore I would have been very much gratified if we had laid down here that our international policy would be to encourage the settlement of disputes through arbitration. I do not want to move any amendment to that effect myself, but I certainly would like to stress that and I shall be very glad if this suggestion is acceptable to the Mover and he himself volunteers to bring forward such an amendment. With this suggestion, I support the amendment moved by Dr. Ambedkar.

Shri M. Ananthasayanam Ayyangar: Mr. Vice-President, though it comes as the last article, article 40, in this Part, I consider it as one of the most important articles. When a storm is raging we cannot escape it by keeping aloof. If we want to have peace and progress in this country it is absolutely necessary that the nations around us also maintain peace and are in the march of progress economically and socially. Therefore we must lay emphasis on this article which seeks to insist upon our taking part in the settlement of international disputes by arbitration and by peaceful means. I am not satisfied that this article is sufficient for this reason that even in the Charter of the Nations on which the U.N.O. is based, one or two articles are missing. That was the reason why the League of Nations failed. The Nations of the world have not come to an agreement that all people should be set at liberty, small and big alike, and that all nations or races occupying particular territories ought to be set free to manage their own affairs. This sentiment did not find a place in article 10 of the League of Nations. Neither does it find a place in the Charter of the United Nations today. Until this is done, I do not think there will be any real peace in the world. Even today, the coloured people of Africa and other parts of the world are not assured that they will be set free. Mandates are imposed upon them and they never end. Mandates are merely transferred from one hand to another hand and these people are kept

[Shri M. Ananthasayanam Ayyangar]

under perpetual domination. The territorial integrity of the various countries are protected by collective security. That means that Holland will be allowed to continue her stranglehold on Indonesia and France will be allowed to keep its possessions in Asia and Africa. Whether we suggest resort to arbitration for the settlement of disputes or some other peaceful method, these things will continue. The last war broke out because England was an Imperialist power and even chhota Belgium was an Imperialist power and this encouraged nations like Germany and Japan to attempt to become imperialist powers too.

I would like very much that we should have some such clause that it shall be the duty and the constant endeavour of the Government of India to see that all people in the world are released from the domination of other people, that each people big or small, each nation or race big or small, get freedom to manage their own affairs within the territory which God has given them. Situated as we are, we cannot do it. For this purpose, arbitration is the sole means of settling international disputes. This also finds a place in the United Nations Charter. I would like, Sir, with your permission to add a clause, clause (d), to the amendment moved by my honourable friend, Dr. Ambedkar. If it is agreeable to the House and if you accept it, the clause will be—

"and (d) to encourage the settlement of international disputes by arbitration."

This is the clause (d) of Mr. Gupte's amendment but he did not move it. The other items in the amendments moved by Dr. Ambedkar would not be really effective unless you suggest the means by which they could be given effect to. International relations can be peaceful, International agreements—trade and other agreements—can be enforced only by arbitration and not by resort to arms. Therefore, Sir, if the House accepts and if the honourable Dr. Ambedkar finds it convenient to accept it, I would suggest that the following be added as sub-clause (d) to his amendment:

"and (d) to encourage the settlement of international disputes by arbitration."

Mr. Vice-President: Does the House give leave to Mr. Ayyangar to make that addition to the amended clause of Dr. Ambedkar?

Honourable Members: Yes.

Mr. Vice-President: Mr. Ayyangar, will you move it formally?

Shri M. Ananthasayanam Ayyangar: Sir, I move that in the amendment of Dr. Ambedkar, at the end add the following sub-clause:—

"and (d) to encourage the settlement of international disputes by arbitration."

Shri Mahavir Tyagi (United Provinces: General): Sir, I am opposed to this.

Mr. Vice-President: If you want to discuss the amendment moved by Mr Ayyangar, Mr. Tyagi, you are perfectly entitled to speak.

Shri Mahavir Tyagi: Sir, the article as sought to be amended by Dr. Ambedkar is a mere pious wish. It does not add any substance to the Constitution. It may be all right when delegates go to foreign countries, mix and familiarise themselves with the delegates from other countries. But when I see the phrases used here, I wonder whether you are really thinking of war against any nation, because whenever I saw any nation speaking in these terms, they were always immediately followed by their guns and aeroplanes. This phraseology has been misused by other nations. I have my suspicions. We cannot question our own motives. You talk of arbitration of international disputes. But where are the arbitrators? We have seen the arbitrators who came here and have seen the way they have been functioning. It is very difficult to get honest arbitrators. How can anybody arbitrate in such matters?

Sir, I prefer war in such cases. War is also a philosophy, it is both a curse and a blessing. If these are our objectives, if we want to maintain peace and seek to maintain just and honourable relations between nations, then I say it is not possible if we remain weak and remain merely a meadow of green grass for bulls to come and graze freely. For the purposes mentioned in this clause what we want is armament, both of will and weapons, moral armament as well as physical armament. We should see to it that our nation is militarily strong. We should see to it that our army, our navy and air force remain strong. That should be the directive that we should give to our future government of India if only to achieve our laudable objective of "world peace". As it is, we are a pygmy in the world. Who cares for you unless you are strong? Unless your argument has guns behind it, nobody would appreciate your arguments. Our present position is weak. I do not say that we are weak against any of our immediate neighbours but to count in the international field, we should be a first-class power. Our aim should be to become a first-class power, a strong power, so that our voice, our pleadings and our arguments may have some weight and people may know that they should not annoy this great country and that would mean a war. So, Sir, I want to reserve one privilege as a man of war, that in case we fail to achieve these objects peacefully, we shall war and accomplish these objects. With these words of reservation, I support whatever you have said, because it is all a pious wish.

Dr. P. Subbarayan (Madras: General): Mr. Vice-President, Sir, I am proposing only a small verbal amendment to Dr. Ambedkar's amendment clause (c) and that is to use the word to 'foster' instead of 'sustain'. Dr. Ambedkar says that he will accept this amendment. The House will give me permission to move this.

Shri T. T. Krishnamachari (Madras: General): Why?

Dr. P. Subbarayan: The reasons are obvious. I think my honourable friend, Mr. Krishnamachari knows it as well as I do.

Shri M. Ananthasayanam Ayyangar: You want to use the word 'foster' instead of the word "sustain".

Dr. P. Subbarayan: Because 'sustain' will imply force. I do not think that we want to use force of any kind either in the future Government of India or in the Government as it is constituted today.

The Honourable Dr. B. R. Ambedkar: Sir, I accept Mr. Kamath's three amendments. I accept Dr. Subbaravan's amendment and I accept the amendment moved by my honourable friend, Mr. Ananthasayanam Ayyangar. I do not accept any other amendment.

Mr. Vice-President: The question is that for article 40, the following be substituted:—

"40. The Federal Republican Secular State in India shall be pledged to maintain international peace and security and shall to that end adopt every means to promote amicable relations between nations. In particular the State in India shall endevour to secure the fullest respect for international law and agreement amongst States and to maintain justice, respect for treaty rights and obligations in regard to dealings of organised peoples amongst themselves."

The motion was negatived.

Mr. Vice-President: The question is that for the existing article 40, the following be substituted:—

"40. The State shall endeavour to—

(a) promote international peace and security;

(b) maintain just and honourable relations between nations;

(c) foster respect for international law and treaty obligations in the dealings of organised people with one another, and

(d) encourage the settlement of international disputes by arbitration."

The motion was adopted.

Mr. Vice-President: The question is that in article 40, the following words be added at the end;

"It shall also promote political and economic emancipation and cultural advancement of the oppressed and backward peoples, and the international regulation of the legal status of workers with a view to ensuring a universal minimum of social rights to the entire working class of the world."

The motion was negatived.

Mr. Vice-President: The question is:

"That article 40, as amended, stand part of the Constitution."

The motion was adopted.

Article 40, as amended, was added to the Constitution.

New Article 40-A

(Amendment No. 1026 was not moved.

Amendment No. 1027 in the name of Shri Algu Rai Shastri was allowed to stand over.)

Shri Gopal Narain (United Provinces: General): Mr. Vice-President, Sir, I gave notice of several amendments on the last date and I did it when I found that the Members of this august House have tabled thousands of amendments and they wanted that every pious and noble sentiment may be incorporated in this Constitution. I also ran in the race, though I was of the opinion that this Constitution has already become very lengthy. I also felt that it should not be filled up with all the details; otherwise it may be made more ridiculous. Now I find that better sense is prevailing and Members are not moving the amendments now. My purpose has been served and with these few general remarks, I do not want to move this amendment or any other amendments tabled by me.

(Amendments Nos. 1029 to 1031 were not moved.)

Prof. K. T. Shah: This is part of Part V, and there is a big question of principle involved in it. I also thought that according to the understanding reached, we should now be going over to the earlier amendments. But I am in your hands, Sir. I do not mind moving this amendment now.

Mr. Vice-President: If you want to move it, you are at perfect liberty to do so. If you do not want to move it now, you may do it at another place.

Prof. K. T. Shah: I should like to reserve it when we come to Part V. I shall take it up then.

(Amendments Nos. 1029 to 1031 were not moved.)

Mr. Vice-President: That finishes Part IV.

Part III

Shri M. Ananthasayanam Ayyangar: May I request you, Sir, to take up Part III?

Mr. Vice-President: That is also to be found in the Orders of the day. We take up Part III. The first amendment is in the name of Professor K. T. Shah, amendment No. 238.

Prof. K. T. Shah: Sir, I beg to move:

"That for the heading 'Fundamental Rights' under Part III, the following be substituted :—

"Fundamental Rights and Obligations of the State and the Citizen"

Sir, on an earlier occasion, while moving an amendment I pointed out that the Constitution seems to leave out completely the Obligations side of human behaviour, and insists more and more.....

Shri M. Ananthasayanam Ayyangar: Sir, I believe Professor K. T. Shah is moving amendment No. 238, to change the heading. May I request him to take this up after we dispose of the articles? The title as it is, is "Fundamental Rights". He wants to include Obligations also. After we dispose of this part, if we find that any articles referring to obligations are introduced substantively, then we can move for the change of the title. In case no article referring to any obligation, is introduced in the substantive portion, there is no purpose in changing the title to include Obligations also. I would request him to allow this amendment to the title to stand over until we exhaust the substantive provisions of Part III.

Prof. K. T. Shah: I am quite willing to agree to the suggestion that this may stand over. I would only point out to my honourable Friend that it is not merely a particular section or sections which include Obligations that would justify a change in heading. I would like by this change in the title to draw attention to an aspect of the Constitution which has been omitted. However, if I am allowed to hold over this amendment, I shall try to bring it to the notice of the House on a later occasion. Meanwhile, I agree to the suggestion.

Mr. Vice-President: This amendment stands over for the present.

(Amendment No. 239 was not moved.)

Mr. Vice-President: Amendment No. 240 stands over.

(Amendments Nos. 241 and 242 were not moved.)

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): Sir, Amendment No. 243 becomes redundant. Article 28 has already been passed. If it had not been passed, this would have been necessary. I do not move this amendment.

Article 7

Mr. Vice-President: The motion before the House is:

That article 7 form part of the Constitution.

We will take up the amendments one by one.

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

'That the following words be added at the end of article 7:—

'or under the control of the Government of India.'

Sir, this amendment was thought necessary because apart from the territories which form part of India, there may be other territories which may not form part of India, but may none-the-less be under the control of the Government of India. There are many cases occurring now in international affairs where territories are handed over to other countries for the purposes of administration either under a mandate or trusteeship. I think it is desirable that there ought to be no discrimination so far as the citizens of India and the residents of those mandated or trusteeship territories are concerned in fundamental rights. It is therefore desirable that this amendment should be made so that the principle of Fundamental Rights may be extended to the residents of those territories as well.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I beg to move—

"That with reference to amendment No. 246 of the List of Amendments, in article 7, the words 'and all local or other authorities within the territory of India or under the control of the Government of India' be deleted."

[Mr. Naziruddin Ahmad]

Sir, along with this, I desire to move the second part of amendment No. 247 because they are related and may be disposed of conveniently together. Sir, I beg to move—

"That before the words 'In this Part' the figures and brackets '(1)' be inserted and the following new clause after clause (1) so framed be inserted :—

"(2) The provisions of this Part shall so far as may be, apply to all local or other authorities within the territory of India or under the control of the Government of India."

At the time I gave notice of this amendment I thought that the whole of the article 7 as redrafted by the Drafting Committee would be moved together. But really only a small amendment has been moved to the original article 7. What I want to do by these amendments is to remove the words—"all local and other authorities within the territory of India" from the article and reintroduce them in a separate clause. In article 7 "State" is defined to mean the Parliament of India and the Government of the Legislature of each of the State *i.e.*, the provinces and Indian States and other States and all *local and other authorities* within the territory of India.

This, I am very sorry to say, creates some amount of anomaly in this context. In fact I have no difficulty in applying the provisions of part III to local and other authorities *i.e.*, District Boards, Municipalities etc., but I object only to the Municipalities and District Boards and other authorities to be styled a 'State'. One honourable gentleman, Pandit Lakshmi Kanta Maitra, objected to the use of the word 'State' even to Indian States and the Provinces because they do not represent full sovereignty, but full sovereignty is not necessary for using the word 'State' in this connection. But I submit that by no stretch of imagination can District Boards and Municipalities be called 'States'. Therefore what I have attempted to do is to remove these words from the article which should be renumbered as clause (1) of the article and add clause (2) just to say that "the provisions of this Part shall, so far as may be, apply to all local or other authorities etc." This avoids the anomaly of describing the local bodies as 'States' and at the same time attains the same object by removing those words from the body of article 7 and relegating them to clause (2). I submit this will remove the anomaly of District Boards etc., being described as 'State' and at the same time serve the purpose.

Syed Abdur Rouf (Assam: Muslim): Sir, I beg to move—

"That in article 7, for the word 'or' the word 'and' be substituted."

Sir, in this article we are going to enumerate what are the States and that enumeration is exhaustive and not merely illustrative. Therefore in my opinion the word "and" will be happier than the word 'or'. Though the word 'or' has got conjunctive sense, it has got other senses as well. In literature it may be quite alright but in matters of law where legal terms are to be used, when we can find a more concise word, we should not use less concise ones. Therefore I recommend this amendment for the acceptance of the House.

Mr. Vice-President: Now it is open to general discussion. I should have said Amendment No. 249 is blocked by Dr. Ambedkar's.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Sir, I consider that it is not advisable that an expression in a legislative enactment should bear different meanings in different parts of the enactment. It will create confusion. Therefore I wish this definition of 'state' had not been entered in this article at all. Further this expression 'state' includes the government of India and its parliament, the governments of the states, *i.e.*, the Provincial states, I think, and its legislature and the local bodies. I know that local authorities have been defined in the General Clauses Act, as District Boards and Municipalities. But I do not know what those 'other authorities' are. Is there any necessity for us to include other authorities which are not defined

either here or anywhere else? Therefore, Sir, as far as this part of the Constitution is concerned, the State is defined in a manner which is comprehensive of all institutions, whether they are legislative bodies, executive bodies or executive authority or the municipal or district boards or for the matter of that even the co-operative institutions, or according to me, even other authorities, such as the sub-magistrates of a locality. So the word 'State' is used to include a man in authority under the circumstances anywhere. That is too wide a definition of the word 'State'. When this definition is given to the same expression used, say for instance in article 13 let us see what is its effect. I may read to you, Sir, sub-clause (2) of article 13.

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State."

That means the local body or the executive of a province or even a Sub-Magistrate might pass any order or the local body might pass any bye-law or resolution modifying the Fundamental Right given under sub-clause (a) of clause 1 of article 13.

Now, it may be contended that the expression is "making any law". Now, let us see whether 'law' has been defined here. Law has not been defined for the entire part, but it has been defined for a certain article—article 8, clause (3). There, it is stated that—

"..... law' includes any Ordinance order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India or any part thereof."

But law has not been defined generally, but it has been defined only for the purpose of article 8, to cover any order that is passed, any bye-law; that suits very well there, as we are abrogating all laws which are inconsistent with Fundamental Rights. If any Magistrate or any municipal body passed any law which derogates from the Fundamental Rights, that shall be considered void. So far so good. But has law not been defined for the purpose of Part III? It may be argued from the analogy of the law defined under clause (3) of article 8, that any order or bye-law passed by a local body or order that may be passed by any other authority may be included in the expression 'Law' in Part III. But what that "any other authority" is, has not been defined. Therefore, it may be contended, and very rightly perhaps, that a Magistrate or a local body or even a collector or even a Minister might pass an order, or make a notification abridging the rights that are given under sub-clause (a) of clause (1) of article 13. Therefore, my submission is, especially in the absence of a definition of law, and in the light of the definition of law under clause (3) of article 8, it will not only create confusion, but it might tend to the usurpation of those rights, and to nullify and abridge the fundamental rights given under clause (1). Sir, I am aware that article 7 says, "unless the context otherwise requires,...". I know that it might be contended that that expression answers my objection. But my submission is this. It is not only law that is passed by a legislature that is law. What is law, must be made quite clear. Unless that is done, the executive might pass an order, or put out a notification and that too might claim to come under this expression. Otherwise, as far as this part is concerned, there is no place at all for any executive authority to make any law, to make anything, say anything or do anything. You have stated in all these places—"Nothing... ...shall...prevent the State from making any law, imposing in the interests of public order restrictions on the etc. etc." That clearly shows that a magistrate might pass an order restricting the right of a person or persons to assemble peacefully. So, when this expression is susceptible of being interpreted as giving authority to a district magistrate, an executive body to abridge the rights given here, with equal weight it may be contended by a local body or by some other authority—and you have not defined your authority.

[Mahboob Ali Baig Sahib Bahadur]

Therefore, I submit, if it is meant that all the authorities mentioned in this article have got the right to abridge rights, the fundamental rights mentioned in clause (1) of article 13, it might lead to absurd results. As I said, a magistrate or even a petty officer in authority can rightly claim under this article to have the authority to abridge a citizen's rights. Therefore, my submission is, either this article is unnecessary, or if you really mean that any man or any officer in authority has got right to abridge the fundamental rights, I submit that this clause should not find a place here at all. It leads to confusion.

I wish that the Member in charge of piloting this Constitution would make it more clear and satisfy us before we are in a position to vote in favour of this resolution.

Mr. Vice-President: I would request Dr. Ambedkar to enlighten us about the points raised here by Mr. Ali Baig. We are laymen and we would like to hear him.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I must confess that although I had concentrated my attention on the speech of my friend who moved this amendment, I have not been able to follow what exactly he wanted to know. If his amendment is to delete the whole of article 7, I can very easily explain to him why this article must stand as part of the Constitution.

The object of the Fundamental Rights is two-fold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority—I shall presently explain what the word "authority" means—upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the Fundamental Rights are to be clear, then they must be binding not only upon the Central Government, they must not only be binding upon the Provincial Government, they must not only be binding upon the Governments established/in the Indian States, they must also be binding upon District Local Boards, Municipalities, even village panchayats and taluk boards, in fact, every authority which has been created by law, and which has got certain power to make laws, to make rules, or make by-laws.

If that proposition is accepted—and I do not see anyone who cares for Fundamental Rights can object to such a universal obligation being imposed upon every authority created by law—then, what are we to do to make our intention clear? There are two ways of doing it. One way is to use a composite phrase such as "the State", as we have done in article 7; or, to keep on repeating every time, "the Central Government, the Provincial Government, the State Government, the Municipality, the Local Board, the Port Trust, or any other authority". It seems to me not only most cumbersome but stupid to keep on repeating this phraseology every time we have to make a reference to some authority. The wisest course is to have this comprehensive phrase and to economise in words. I hope that my friend will now understand why we have used the word "State" in this article and why this article must stand as part of this Constitution.

Mr. Vice-President : I will now put this amendment to the vote. First of all, we have amendment No. 21 of Mr. Naziruddin Ahmad, which is an amendment to amendment No. 246.

The question is :

"That with reference to amendment No. 246 of the List of Amendments, in article 7 the words "and all local or other authorities within the territory of India or under the control of the Government of India" be deleted."

The motion was negatived.

Mr. Vice-President: The next amendment is No. 246 moved by Dr. Ambedkar.

The question is: that the following words be added at the end of article 7:

"or under the control of the Government of India."

The motion was adopted.

Mr. Vice-President : Then we come to amendment No. 247 as amended by No. 22.

The question is:

That in article 7, for the words and inverted commas " 'the State' " the word and inverted commas ' "State" ' be substituted, and before the words "In this Part" the figure and brackets "(1)" be inserted, and the following new clause after clause (1) so framed be inserted :

"(2) The provisions of this Part shall, so far as may be, apply to all local authorities within the territory of India or under the control of the Union Government."

The motion was negatived.

Mr. Vice-President: The question is: that in article 7, for the word "or" the word "and" be substituted.

The motion was negatived.

Mr. Vice-President: The question is: that article 7, as amended, stand part of the Constitution.

The motion was adopted.

Article 7, as amended, was added to the Constitution.

Article 8

Mr. Vice-President : Now we go on to the next article.

The motion is :

That article 8 stand part of the Constitution.

There are a number of amendments. No. 250 is by Dr. P. K. Sen but he is not in the House. No. 251 is in the name of Mr. Kamath.

Shri H. V. Kamath: I am not moving it.

Mr. Vice-President: Then there is No. 252 by Pandit Lakshmi Kanta Maitra.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. Vice-President, Sir, I move :

That the proviso to clause (2) of article 8 be deleted.

The purpose of this amendment is self-evident, and as I have been strictly enjoined not to make any speech I simply move this amendment.

Sir, I move.

Mr. Vice-President : Then there are amendments No. 253 to 258. Is any Member going to move his amendment ?

(The amendments were not moved.)

Shri Lokanath Misra: Sir, I want to move amendment No. 259 standing

[Shri Lokanath Misra]

in my name. I beg to move: that after clause (2) of article 8, the following new clause be inserted and the existing clause (3) be re-numbered as clause (4):

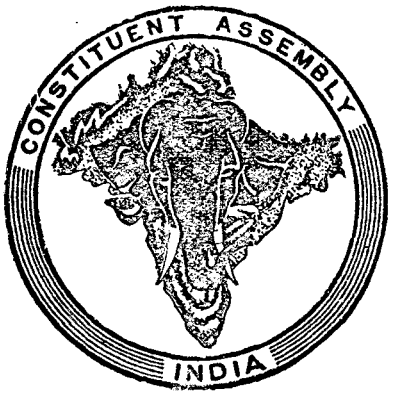
"(3). The Union or the State shall not undertake any legislation or pass any law discriminatory to some community or communities, or applicable to some particular community or communities and no other".

In moving this new article I seek nothing more than supplementing article 35 which we have passed. Article 35 directs the state to do certain things, that is, to bring about a uniform civil code. My article simply says what the state should not do, so that it may not frustrate the very purpose for which article 35 has been enacted. Sir, deliberately we have chosen that our state is a secular state and we have tried to get rid of all the wranglings of religion because of the belief that although religion was made to unite mankind it has been found that it has disunited mankind and has brought various disputes. Rightly, therefore, have we declared that our State would be a secular State and thereby we mean that everybody who inhabits this land, everybody who is a citizen is just a man and his human needs will be fulfilled and his religion, if he has any, will be taken care of by the individual himself.

If we approve of this purpose, to give mankind that equality, that sense of justice, then when we are here to legislate for a future constitution, we must make it a fundamental right that we will not legislate in a manner and on a matter which will discriminate between one community and another. Our law must be so broad-based, must be so very intrinsically sound that it must apply to every human being, every citizen of this land. When you make any difference between citizens in this land, you can make it only on the lines of community and community directly means religion and we have deliberately eschewed religion. Therefore, to be frank enough, to be bold enough, to be true enough to our professions, we must make it a point that whenever we bring anything on the anvil of legislation, it must be such that it will apply to one and all of this land and there will be no differentiation. Let people say: We have one fundamental safeguard against inequality and injustice. Here is the law. It applies to everybody,—be he a Rajah, be he a Praja, be he a Hindu, be he a Muslim, be he a Parsi, be he a Christian. That itself is enough safeguard, because it will apply to every citizen equally. If the law is bad, it is bad for everybody; if it is good, it is good for everybody. Therefore, I say this must be a fundamental principle. We must accept it here and now that any law that henceforward we may be legislating must be applicable to one and all. To that effect, I candidly place before this House that to avoid all future doubts, all disparity, all discrimination, all distinction, we must make it a law and a fundamental law that the Union or the States shall not undertake any legislation or pass any law discriminatory to some community or communities, or applicable to some particular community or communities and no other. This House has very frankly, openly and boldly accepted the principle in article 35. I simply beg this House to make that article complete and self-sufficient. That gave only a direction; this gives a positive mandate for what we should not do, because by not doing all these things, by discriminating between citizens and communities we have divided the country and let it not lead to greater divisions. I submit that unless we accept this principle, our idea of a united Nation, of a united mankind and of equality of every citizen in this land will be frustrated. I therefore commend this new article to the consideration of this great House.

The Assembly then adjourned till Ten of the Clock on Friday, the 26th November 1948.

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1948

CONSTITUENT ASSEMBLY DEBATES

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Price 5 annas

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

STATEMENT *re* EIRE ACT

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

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

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

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

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

[The Honourable Pandit Jawaharlal Nehru]

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

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

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

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

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

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

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

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

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

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

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

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

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

MOTION *re* ADDITION OF SUB-RULES TO RULE 38-P

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

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

'(2) The President shall have the power to disallow amendments which seek to make merely verbal, grammatical or formal changes.

(3) The President shall also have the power to select for consideration and voting by the House the more appropriate or comprehensive amendment or amendments out of the amendments of similar import and any such amendment not so selected may, unless withdrawn, be deemed to have been moved and may be put to the vote without discussion'."

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

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

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

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

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

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

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

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

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

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

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

Mr. Naziruddin Ahmad: I bow to your ruling.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Am I to move all the amendments, Sir?

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

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

I beg to move:

"That in the proposed sub-rule 38-P, for the word 'amendments' the words 'such amendments' be substituted."

This is only verbal.

Then I move No. 8:

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

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

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

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

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

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

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

Mr. Naziruddin Ahmad: Sir, I move:

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

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

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

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

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

Then, Sir, I move amendment No. 17:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Shri Biswanath Das: Sir, I move:

"That in the proposed sub-rule (3) of rule 38-P, the words 'without discussion' be deleted."

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

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

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

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

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

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

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

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

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

[Shri Biswanath Das]

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

With these few words I move my amendment.

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

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

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

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

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

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

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

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

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

[Prof. K. T. Shah]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maulana Hasrat Mohani: I want to say that every day . . . . . .

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

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

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

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

* [ ] Translation of Hindustani speech.

[Shri Algu Rai Shastri]

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

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

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

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

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

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

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

* [ ] Translation of Hindustani speech.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I shall now start taking votes on the amendments.

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

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

Mr. Vice-President: The question is:

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

The motion was negatived.

Mr. Vice-President: The question is:

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

The motion was negatived.

Mr. Vice-President: The question is:

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

The motion was negatived.

Mr. Vice-President: The question is:

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

The motion was negatived.

Mr. Vice-President: The question is:

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

The motion was negatived.

Mr. Vice-President: The question is:

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

The motion was negatived.

Mr. Vice-President: The question is:

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

The motion was negatived.

Mr. Vice-President: The question is:

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

The motion was negatived.

Mr. Vice-President: The question is:

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

The motion was negatived.

Mr. Vice-President: The question is:

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

The motion was negatived.

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

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

Mr. Vice-President: The question is:

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

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

The motion was negatived.

Mr. Vice-President: The question is:

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

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

The motion was negatived.

Mr. Vice-President: The question is:

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

(2) The President shall have the power to disallow amendments which seek to make merely verbal, grammatical or formal changes.

(3) The President shall also have the power to select for consideration and voting by the House the more appropriate or comprehensive amendment or amendments out of the amendments of similar import and any such amendment not so selected may, unless withdrawn, be deemed to have been moved and may be put to the vote without discussion."

The motion was adopted.

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

Shrimati G. Durgabai: Sir, I move:

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

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

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

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

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

Sir, I move:

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

Mr. Naziruddin Ahmad: Sir, I move:

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

By way of alternative amendment, I move:

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

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

Person presiding to have powers of President in certain cases.

"14A. The person presiding over the Assembly under rules 13 and 14 shall have all the powers of the President under Chapter V of these rules except under rules 38-U and 38-V."

Sir, I also move:

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

'*Explanation.*—This rule shall have retrospective effect as if it was made on the 4th day of November 1948.' "

Sir, I move:

"That in the proposed rule 38-W, for the words 'any person for the time being presiding over the Assembly' the words 'the Chairman' be substituted."

Sir, I move:

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

'*Explanation.*—This rule shall have retrospective effect as if it was made on the 4th day of November 1948.' "

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The question is:

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

'*Explanation.*—This rule shall have retrospective effect as if it was made on the 4th day of November 1948.' "

The motion was negatived.

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

The question is:

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

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

The motion was adopted.

Article 8—*contd.*

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

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

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

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

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

'(3) In this article—

(a) the expression 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India or any part thereof;

(b) the expression 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.' "

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

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

"That in clause (3) of article 8, for the words 'custom or usage' the words custom, usage or anything' be substituted."

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

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

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

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

I beg to move:

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

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

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

Mr. Vice-President: All right.

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

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

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

The Honourable Shri B. G. Kher: (Bombay: General): Sir, the wording is 'includes', not "means".

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

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

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

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

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

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

Honourable Members: We should like to adjourn now.

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

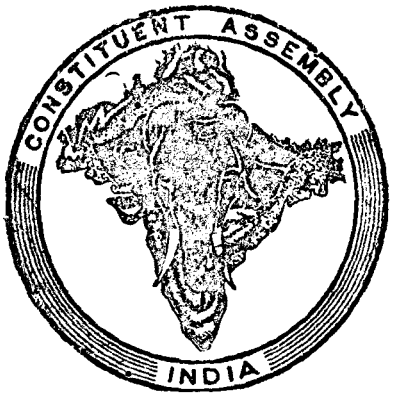
Shri Satyanarayan Sinha: (Bihar: General): We shall meet on Monday.

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

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

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Monday
29th November
1948

CONSTITUENT ASSEMBLY DEBATES

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 29th November 1948

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:

Shri Balwant Singh Mehta (United State of Rajasthan).

STATEMENT *re* FUTURE PROGRAMME

Mr. Vice-President (Dr. H. C. Mookherjee): Before we start discussion of article 8, which has not yet been put to the vote, I beg leave to inform the House that at one time it was decided, of course informally, that we should meet tomorrow from 3 P.M. to 8 P.M., then a large number of Members represented to me that it would be inconvenient for various reasons. Therefore from tomorrow we shall meet at 9-30 A.M. and carry on till 1-30 P.M. That would give us four hours of work daily.

The second thing which I have to tell the House is that we shall meet upto the 13th of December and then break up, and re-assemble on the 27th December. The exact time will be notified hereafter.

Article 8—(*contd.*)

Mr. Vice-President: Does any honourable Member wish to speak on article 8? If not, I should like to put it to vote.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, there is no quorum. I do not want to hold up the proceedings but in a House like this we cannot do anything at all consistently with the rules.

(The bells were rung.)

(There being no quorum.)

Mr. Vice-President: The House stands adjourned for a quarter of an hour.

The Assembly then adjourned till Twenty-five minutes past Ten of the Clock.

The Assembly reassembled at Twenty-five Minutes Past Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

Mr. Vice-President (Dr. H. C. Mookherjee): I understand there is another Member who has to sign the roll and take the pledge.

The following Member took the Pledge and signed the Register:—

Lt.-Col. Dalel Singh (United State of Rajasthan).

STATEMENT *re* TIME OF MEETINGS

Mr. Vice-President: For the benefit of those Members who did not attend the House in time, I have to announce here again that from to-morrow we shall assemble at 9-30 A.M. and continue up to 1-30 P.M. and that we shall hold the last meeting of the current session on the 13th and reassemble on the 27th December. Our last day will be the 13th December and we shall reassemble on the 27th December; the exact time will be announced hereafter.

May I in all humility suggest that it is improper on the part of Members to be unpunctual in attending the House? We have lost 20 minutes in this way to-day and I do not know how we shall be able to explain it to the public (*Hear, hear*).

Article 8—(*contd.*)

Mr. Vice-President: Shall we resume discussion of article 8? Is there any honourable Member who wishes to speak on it?

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-President, the amendment of Mr. Naziruddin Ahmad, I think, creates some difficulty which it is necessary to clear up. His amendment was intended to remove what he called an absurdity of the position which is created by the Draft as it stands. His argument, if I have understood it correctly, means this, that in the definition of law we have included custom, and having included custom, we also speak of the State not having the power to make any law. According to him, it means that the State would have the power to make custom, because according to our definition, law includes custom. I should have thought that that construction was not possible, for the simple reason that sub-clause (3) of article 8 applies to the whole of the article 8, and does not merely apply to sub-clause (2) of article 8. That being so, the only proper construction that one can put or it is possible to put would be to read the word 'Law' distributively, so that so far as article 8, sub-clause (1) was concerned, Law would include custom, while so-far as sub-clause (2) was concerned, 'Law' would not include custom. That would be, in my judgment, the proper reading, and if it was read that way, the absurdity to which my Friend referred would not arise.

But I can quite understand that a person who is not properly instructed in the rules of interpretation of Statute may put the construction which my Friend Mr. Naziruddin Ahmad is seeking to put, and therefore to avoid this difficulty, with your permission, I would suggest that in the amendment which I have moved to sub-clause (3) of article 8, I may be permitted to add the following words after the words "In this article". The words which I would like to add would be—

"Unless the context otherwise requires"

so that the article would read this way—

'In this article, unless the context otherwise requires—

(a) The expression 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India or any part thereof;

(b) the expression . . . . '"

I need not read the whole thing.

So, if the context in article 8 (1) requires the term law to be used so as to include custom, that construction would be possible. If in sub-clause (2) of article 8, it is not necessary in the context to read the word law to include custom, it would not be possible to read the word 'law' to include custom. I think that would remove the difficulty which my Friend has pointed out in his amendment.

Mr. Vice-President: I shall put the amendments, one by one, to vote. I am referring to the numbering of the amendments in the old list.

I put amendment No. 252, standing in the name of Mr. Mahboob Ali Baig to vote. The question is:

"That the proviso to clause (2) of article 8 be deleted."

The amendment was adopted.

Mr. Vice-President: Then I put amendment No. 259, standing in the name of Shri Lokanath Misra. The question is:

"That after clause (2) of article 8, the following new clause be inserted and the existing clause (3) be renumbered as clause (4) :—

(3) The Union or the State shall not undertake any legislation, or pass any law discriminatory to some community or communities or applicable to some particular community or communities and no other."

The amendment was negatived.

Mr. Vice-President: Then I put amendment No. 260, as amended by Dr. Ambedkar. The question is:

"That for clause (3) of article 8, the following be substituted :—

'(3) In this article, unless the context otherwise requires,

(a) The expression 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India or any part thereof;

(b) the expression 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.' "

The amendment was adopted.

Mr. Vice-President: The question is:

"That in clause (3) of article (8) for the words 'custom or usage' the words 'custom, usage or anything' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (3) of article 8 for the words 'custom or usage having the force of law in the territory of India or any part thereof' be deleted."

The motion was negatived.

An Honourable Member: May I know whether you are referring to the old or new list of amendments?

Mr. Vice-President: I was referring to the old list for the purpose of convenience. Henceforward we shall go according to the numbering in the new list, which was, I understand, distributed to honourable Members last evening.

The question is:

"That article 8, as amended, stand part of the Constitution."

The motion was adopted.

Article 8, as amended, was added to the Constitution.

Article 8-A

Pandit Balkrishna Sharma (United Provinces: General): There are some other amendments to article 8 in the form of inserting a new article 8-A.

Mr. Vice-President: Those are new articles which will be taken up presently.

Amendments Nos. 266 to 269 and 272 relate to language and script, which should stand over as that has been the decision of the House. I shall take up Amendment No. 270 standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Sir, I beg to move:

"That after article 8, the following new article be added :—

'8-A. Unless the context otherwise requires, the Rights of Citizens herein defined in this Part of the Constitution shall be deemed to be the obligation of the State as representing the community collectively : and the obligations of the citizens shall be deemed to be the Rights of the State representing the community collectively.' "

Sir, I do not wish to waste the time of the House. May I point out that this amendment is in substance the same as was rejected by the House when it was considering the Directives. I think the old number was 848. In substance it amounts to the same thing. I can make out a case to show that it is slightly different, both in numbering and perhaps in intention, but as I have no desire to waste the time of the House, I would beg leave to withdraw this amendment, as it seeks to make rights and obligations of the State and citizen conversely obligations and rights.

Mr. Vice-President: Has the honourable Member the permission of the House to withdraw his amendment?

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

Prof. K. T. Shah: Sir, if I may speak against myself, it seems to me, Amendment No. 271 on the List is somewhat out of order, because it is a mere recommendation to the Draftsman to insert a clause, rather than a specific amendment, or a clause itself. I do not wish to move it.

Mr. Vice-President: The next amendment is No. 273 in the new list in the name of Mr. L. N. Misra.

Shri Lokanath Misra (Orissa: General): Sir, I beg to move:

"That after article 8, the following new article 8-A be inserted :—

'RIGHT OF SUFFRAGE AND ELECTION

8-A. (1) Every citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution or any law made by the Union Parliament or by the Legislature of his State on any ground, *e.g.*, non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections.

(2) The elections shall be on the basis of adult suffrage as described in the next preceding sub-clause but they may be indirect, *i.e.*, the Poura and Grama Panchayats or a group of villages, a township or a part of it having a particular number of voters or being an autonomous unit of local self-government shall be required to elect primary members, who in their turn, shall elect members to the Union Parliament and to the State Assembly.

(3) The Primary Members shall have the right to recall the member they elected to the Parliament or the Assembly of the State.

(4) A voter shall have the right to election and the cost of election shall be met by the State.

(5) Every candidate must be elected by the People and even if there is no rival, no candidate shall be elected unless he gets at least 1/3 of the total votes'."

Sir, in moving this new article I have in mind the elections that are to come on the basis of adult suffrage. As a worker in the villages and as a man knowing his own people I beg to submit that this new article I propose will give real prestige and meaning to adult suffrage and democracy. I would submit that although I am not yet a man who would carry weight in the House, in the name of democracy, democracy of the intelligent will, we must frame our election rules for adult suffrage in such a manner that we will not reduce democracy to ridicule or adult suffrage to a sham. The first paragraph and the first sentence of the 2nd paragraph of this new article I propose are just reproduction of articles 67(6) and 149(2). Therefore I need not say much about this.

Paragraph (2) is very important and we have almost decided that the next elections or the future elections shall be on the basis of adult suffrage. It means that every citizen who is not otherwise disqualified under the statute and is 21 years of age or more shall be entitled to be a voter, and will elect members to the Union Parliament or the State Assemblies. This is a great aspiration, but we know our people. They are simple, they are good. But they are not as clever or as intelligent as the diplomats or the members that will be coming to represent them in the many Houses. While granting adult suffrage we must save it and shape it by making such an arrangement that every adult who is entitled to be a voter will be in a position to choose his representative intelligently and correctly. Not only that; having chosen his representative intelligently and correctly, he will be in a position every moment to assess what his representative does in the many Houses, either at the Centre or in the States. You will see from the Draft Constitution that for every 750,000 persons we will have one representative in the Union Parliament. I beg to submit that that is too big a number, and unless we do not mean what we say, it will be difficult for one member to educate those 750,000 people, to do them any good, to serve them, to know their mind, and having known their mind to come to the House and represent their grievances and do whatever is possible for them. I therefore submit that adult suffrage should be indirect—indirect in the sense that having decided the constituencies which, let us say, will be a region consisting of about 750,000 voters, we will divide that constituency into local self-governing units and these units will be required to elect their primary members. Suppose we have 750,000 people. Granting that every village or self-governing unit has about 1,000 voters, we will have about 750 units. Suppose every unit has a panchayat whose number might be three or five, we will have 750×5, that is, about 3,750 primary members. And those 3,750 primary members will be required to elect their representative either to the Union Parliament or to the State Assembly. If that happens it will be quite good because those 750,000 people will be electing their primary members to a strength of 3,750, and those 3,750 members will use their discretion and they will know the man they will be selecting as their representative. That will be a healthy and real process of election. If that is not going to be done, we all know what happens and therefore will happen in elections. We may raise a dust; we may make a hue and cry; raise slogans and mesmarise. In a day or two in course of one month in five years we will be lecturing, speaking and raising the emotions of people and asking them for party devotion. The result will be that only for a month in five years people will be in terrifying touch with the political busybodies. We would be giving them hopes and those hopes will dash down and evaporate as soon as the elections are over. That will not be a desirable real thing. If we really mean that adult suffrage will be educating the people and elections will be an instructive process, we can have no other way of achieving our object than by dividing the constituencies into local self-governing units—manageable units. Those units will be in close touch with the representatives and the representatives will be in touch with the units, and there will result a real process of instruction, advice and guidance. I beg to submit that it has been a great shame that democracy works in the name of the people, but the

[Shri Lokanath Misra]

people are nowhere in the picture. For men are little and their capacity cannot transcend their limited experience or grow except by continuous building upon their historic and traditional past. They can control great affairs only by acting together in the country and controlling small affairs and finding through experience men whom they can entrust with larger decisions. This is how they can talk rationally for themselves. Democracy can work only if each state is made up of a host of little democracies and rests, not on isolated individuals however great, but on groups small enough to express the spirit of neighbourhood and personal acquaintance. I hope I need not speak much about that. This great House, this learned House, this responsible House knows and can picture the state of things that will happen when there will be adult suffrage. It is a vast thing without yet any plan or arrangement. By that we may get some party strength, but we cannot educate the people and give them the strength and the authority that they really possess or ought to possess.

Coming to (3)—primary members shall have the right to recall the member they elected to the Parliament or the Assembly of the State—this is a very real fundamental right. We know that when we are returned to the Assemblies we come there as representing the masses for five years. But what we care for is the party caucus—the high command—and if it is pleased we are all right. We do not care for the people. I therefore submit that if we are to be real members representing the people, our first concern should be the people. They must be our masters. If we serve them well we are there; if we do not we must go out. But that does not happen now. Therefore it is essential that if people have a right to elect members they must have the right to recall them if things go wrong. The right to recall is a fundamental right in democracy. Unless we have that we cannot have proper democracy. I therefore submit to you that if we are going to give the people a right to elect their representatives who will rule in their name, we must at the same time give them the right to recall the representative if things go wrong. In fact what happens here is, we do not care for the people; there is somebody high up and he selects people. He says so and so must be elected and it is done. Therefore the selected person's primary business is to look up and not down. It is a bad state of democracy and I say we must stop it.

Then regarding (4),—a voter shall have the right to election and the cost of election shall be met by the State—I say so, because to come to the Assembly is not a profession or a profiteering business. If that is the concern of the State and if a person who comes to the Assembly comes to serve the people, it is necessary that the State must see that his election expenses are borne by the State. Otherwise some landlords and some capitalists will build up a party to set up candidates and those candidates will be returned. Let us say here is a poor man, a good worker, an honest man; but he has neither the money nor the party backing. The result is he cannot stand for election. If he stands he comes to ridicule. If you say that the election is as much in the interest of the State as the President or the Ministers or the bureaucracy, you must say that in the same manner as they are brought to being, legislative members should also come to the Assembly, the State bearing their election expenditure in a regulated and therefore in the least expensive and most organized manner. This may be laughable, but this is just and fair and unless we make such a provision no sincere, honest and real worker can be returned at least for the next fifteen or twenty years. If we do not do so now, we invite only revolution. And revolution will make everything topsy-turvy. It will have to be done, then by the fire of the people instead of our intelligent understanding, if we chose it now. Therefore the cost of the elections must legitimately and in fairness to the cause be borne by the State because election as

such is a State affair and is not a private concern. It need not stagger us now. We must not allow members to come calculating profit and loss, calculating how much money they will be making in five years and therefore how much they may beg, borrow or steal for this parliamentary investment.

Mr. Vice-President: Mr. Misra, I must now ask you to stop because you have had two instalments.

Shri Lokanath Misra: All right, Sir.

Shri Algu Rai Shastri (United Provinces: General): *[Mr. President, I rise to oppose the amendment moved by my Friend. My first reason for doing so is that it has no relation to the question raised here. Matters relating to elections have been dealt with in the Draft Constitution at other places where it has been stated as to how the Legislature shall be formed, who shall be the members of the Legislatures; what shall be their rights; what shall be the procedure of their elections. Amendments of this nature may be moved in the article dealing with such things. This amendment is totally irrelevant to Fundamental Rights of the Draft Constitution. This is my first reason. Moreover, my Friend proposes therein that the State should incur the expenses of election for all the candidates seeking election. He says that seeking election to any Legislative is not a business proposition for any candidate. Consequently it is very necessary that the State should bear the election expenses. My worthy Friend has forgotten the fact that if the State begins to practice this generosity every one whose name may appear on the electoral roll and who may be eligible for election will seek election—if not for any other reason, at least for the fun of it. No state in the world can hope to remain financially solvent if it adopts the practice of bearing the election expenses of the candidates. As there would be no financial risk involved in seeking election, for the State would be bearing them all, and as every one would have the freedom to seek election, I am afraid that every one would try his luck especially when he would not be losing anything in particular by being defeated at the polls. It is very improper to move an amendment that contains such a proposal or to support it enthusiastically on the ground that it is very important and ensures democracy and smooth functioning of the Government. This amendment should be rejected outright and should never be accepted.]

The Honourable Dr. B. R. Ambedkar: I cannot accept this amendment.

Mr. Vice-President: The question is:

"That after article 8, the following new article 8-A be inserted :—

'RIGHT OF SUFFRAGE AND ELECTION

8-A. (1) Every citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution or any law made by the Union Parliament or by the Legislature of his State on any ground, *e.g.*, non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections.

(2) The elections shall be on the basis of adult suffrage as described in the next preceding sub-clause but they may be indirect, *i.e.*, the Poura and Grama Panchayats or a group of villages, a township or a part of it having a particular number of voters or being an autonomous unit of local self-government shall be required to elect primary members, who in their turn, shall elect members to the Union Parliament and to the State Assembly.

(3) The Primary Members shall have the right to recall the member they elected to the Parliament or the Assembly of the State.

(4) A voter shall have the right to election and the cost of election shall be met by the State.

(5) Every candidate must be elected by the People and even if there is no rival, no candidate shall be elected unless he gets at least 1/3 of the total votes.' "

The motion was negatived.

* [ ] Translation of Hindustani speech.

Article 9

Mr. Vice-President: The motion before the House is:

that article 9 form part of the Coustitution.

Shri C. Subramaniam (Madras: General): Sir, I move:

"That the second para. of clause (1) of Article 9 be numbered as new clause (1a), and the words 'In particular' in the new clause so formed, be deleted."

The reason for the amendment is this: article 9 as it stands is a little bit misleading. 9(1) says: 'The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them''. Then it says: ''In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainments, or.....''.

It would look as if, after a general clause saying that the State shall not discriminate, we give instances wherein the State shall not discriminate by using th words 'In particular'. As a matter of fact it is not so. After the words 'In particular' that clause refers to access to shops, etc. That is not a case where the State has the power to discriminate. Therefore it should read as a separate clause. That is why I have suggested that the words 'In particular' should be removed and it should form a separate clause as 9 (1a) thus: ''No citizen shall, on grounds only of religion, race, caste, sex or any of them be subject to any disability,.....''.

Mr. Vice-President: The Member who has given notice of amendment No. 276 may now move the second part of it, *viz.*, to insert the words ''discrimination'' and ''and public worship'' after the words 'liability' and 'public resort' respectively.

(The amendment was not moved.)

Mr. Vice-President: The next two, (277 and 278) are verbal amendments and are therefore disallowed. The words ''class or community'' are, in my opinion, not necessary. These are implied in the word 'religion'.

Amendment No. 282 standing in the name of Shri Prabhu Dayal Himatsingka is a comprehensive amendment and may now be moved.

As the Member is absent, Syed Abdur Rouf may move amendment No. 280.

Syed Abdur Rouf (Assam: Muslim): I move, Sir:

"That in Article 9, after the word 'sex' wherever it occurs, the words 'place of birth' be inserted."

The intention of this article is to prohibit discrimination against citizens. We have prohibited discrimination on grounds of 'religion, race, caste or sex'. But I am afraid, Sir, the evil elements who might attempt to make discrimination against citizens will do so not on the ground of religion, race, caste or sex. To attempt to make discrimination on grounds of religion will be too frontal an attack for anybody to dare. As for caste, the same argument applies. As for ''sex'', I do not think that in the middle of the twentieth century there will be anybody attempting to make any discrimination on that ground. What was possible in bygone days is not possible now. Now, let us examine whether the word ''race'' can save the situation. Race has got a very comprehensive meaning

and applies in cases like the Aryan race, the Dravidian race, the Mongolian race, etc. If anybody wants to make any discrimination on the ground that a particular gentleman belongs to a particular province, the word "race" cannot stand in his way. In my opinion attempts may be made to make discrimination against citizens on ground of place of birth and that under the guise of local patriotism. To guard against this possibility, I have brought in this amendment and I hope that it will be accepted.

Mr. Vice-President: I will not allow amendment No. 279 to be moved but it will be put to the vote. We next come to amendment No. 281. I regard this amendment as merely verbal and therefore over-rule it. Then we come to amendments Nos. 283 and 285. Amendment No. 283 may be moved. Professor K. T. Shah.

Prof. K. T. Shah: It is more or less the same as the one moved recently and I do not wish to waste the time of the House by further remarks.

(Amendments Nos. 285, 284, the latter part of 288, and No. 291 were not moved.)

Mr. Vice-President: Then we come to amendment No. 286, first part. This is merely a verbal amendment and therefore it is disallowed. I need hardly point out that the word "creed" is unnecessary in view of the more comprehensive word "religion". Then we come to amendment No. 286, second part. Amendments Nos. 293 to 301, 304, 305, 306 and 308, are all amendments of similar import and therefore are to be considered together. It seems to me that amendment No. 293 standing in the name of Professor K. T. Shah is the most comprehensive.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 9, for sub-clauses (a) and (b) the following be substituted :—

'any place of public use or resort, maintained wholly or partly out of the revenues of the State, or in any way aided, recognised, encouraged or protected by the State, or place dedicated to the use of general public like schools, colleges, libraries, temples, hospitals, hotels and restaurants, places of public entertainment, recreation or amusement, like theatres and cinema-houses or concert-halls; public parks, gardens or museums; roads, wells, tanks or canals; bridges, posts and telegraphs, railways, tramways and bus services; and the like.' "

Sir, in seeking to move this amendment, I am not merely trying to give a list of places of public use or resort, or those dedicated to public service, from which in the past discrimination has been made and individuals of particular communities or classes have been excluded for no other reason except their caste or birth. In a Constitution founded upon the democratic equality of all citizens, I think it would be absurd, it would be wholly out of place, to allow any such discrimination being made. All places, therefore, which are either wholly or partly maintained out of public funds, or in any way encouraged, supported or protected by the State, should be accessible, I suggest, in equal measure to all citizens irrespective of caste, sex, birth, etc.

Clearly this is the intention of the article, and I am only seeking to expand and express it more clearly than has been done in the wording of the article as it stands. It is the more so as, in later articles, there seems to have been some exceptions introduced which might permit denominational, sectarian, or communal institutions not only to flourish, but to flourish at the cost of the public. I think it would be a very vicious principle if we tolerate this kind of exclusiveness which would be a blot on real democracy. If you mean definitely and clearly that there shall not be any sectarian or denominational exclusiveness; if you mean definitely and clearly that places of such utility as schools, or hospitals or asylums shall not be reserved for any reason for the members of a given sect or community, then I think it is not too much to demand that these should be made open and

[Prof. K. T. Shah]

accessible to all citizens of this country. And because we have had in the past very distressing experience of, let us say, wells not being allowed to be used by members of a particular class, or canals not being allowed to be used except on certain occasions or under certain conditions, and still more so, schools, hospitals and other places of this kind which are of very urgent public necessity, I think it would be not acting up to the ideals of this Constitution if there is not perfect and real equality amongst the citizens of this country.

The excuse is often made that a given institution is maintained, or at least initially founded, by some donations of a munificent member of a given community, and that in his original deed of trust setting up the institution and providing the funds, he makes it a condition that only members of a given community or members of a given caste or sub-caste are to be admitted to the benefits of such an institution. I think it is a lack of civic sense, and evidently against the idea of equality of citizenship, that such institutions were maintained exclusively or predominantly for certain communities.

In the past, when the Government of the country was in the hands of an alien race, and that race itself was deliberately making exclusion against the children of the soil a common feature of this policy for holding this country by maintaining clubs, hospitals, schools and other such places for their own compatriots so to say, there could be some understanding why their example might be followed also by those, at any rate, who imitated them in most respects. But now that principle,—the cause of all exclusiveness, is no more in this country, now that we are directly recognising and founding our constitution on the equality of all citizens, I submit that to introduce or permit exclusiveness in any way, whether directly stated or through a provision like this included in the Constitution, will make for a tendency of exclusiveness which should be reprobated by us, and should be therefore disallowed.

Our Constitution should make it expressly clear that all citizens being equal, their public institutions, and places of public resort, etc., which I have mentioned in my amendment, should be quite open, and must be open, to all those who are citizens of the country. There may be, it is possible, some claim that any particular class or community bears the cost of maintenance, if not wholly, at least in part, on its own shoulders. I have tried to make the Amendment so far comprehensive that, even where an institution of this kind, or a place of public resort of this kind, is founded exclusively and maintained entirely by the donation of any particular individual, if it receives any public recognition, protection, safeguard, or encouragement of any kind, from a public authority, it would come within the scope of this article and as such would be made accessible to all equally.

I do not think that in any such provision, there would be any injustice to any vested interests, not only because from its very start such a vested interest would be regarded as objectionable in my eyes. It would be open to such munificent founders without losing so to say their cheap and easy method of securing immortality for themselves, to widen the terms of that trust, if the trust deed stands in the way, and make it possible for all to enjoy the benefits or advantages of such an institution equally.

We have had in every city in India, such exclusive institutions devoted to a sect. Recently we had a distressing spectacle of a public hospital in Bombay, not being accessible to any other community than that of the founder, which raised a considerable agitation in certain quarters. The refusal of the use of that hospital was openly defended on the ground that the foundation was a particular class foundation expressly so stated, and as such not available for use to members of other communities.

I think examples like this can be quoted without number from the experience of any place of considerable population in this country. But the fact that such examples do occur, and that such experience is within the memory and recollection of almost every member of this House, is in itself the strongest argument for us to accept this amendment of mine, and make it impossible hereafter to authorize any person or any community or class to say that a given institution, whether school, temples, hospitals, theatres, restaurants or what not shall be exclusively reserved for their benefit, if in the slightest degree it receives financial help or assistance or encouragement or safeguard from the State. I hope the amendment will commend itself to the House and the principle of it will be incorporated in the Constitution.

(Amendments No. 38 of List I, Nos. 294, 295, 296, 297, 298, 300, 301, 304, 305, 306, 308 and 287 were not moved.)

Mr. Vice-President: Amendment No. 288 standing in the name of Mr. Naziruddin Ahmad consists of three separate amendments. The first amendment is merely verbal and is therefore disallowed. The second and third are the same as amendments Nos. 278 and 284. I am therefore not allowing these also.

(Amendments Nos. 292 and 302 were not moved.)

Shri Guptanath Singh (Bihar: General): Sir, I have not come here to compete with my honourable Friends who table and move irrelevant and useless amendments, but I have come here to make.....

Shri H. V. Kamath (C. P. and Berar: General): Mr. Vice-President, is the honourable Member in order in making such a statement in this House?

Mr. Vice-President: I think you had better go on with your speech.

Shri Guptanath Singh: I have come, Sir, to move this little amendment to make the article comprehensive. So, Sir, with your permission, I beg to move:

"That in sub-clause (b) of the second paragraph of clause (1) of article 9, after the words 'wells, tanks,' the words 'bathing ghats' be inserted."

I have deleted the word 'kunds' from the original amendment and I only want that "bathing ghats" should be included here.

(Amendment No. 307 was not moved.)

Mr. Vice-President: Amendments Numbers 309 and 322 are the same. Amendment No. 322 is more comprehensive. I shall allow that amendment to be moved at the proper time.

Then, amendments Nos. 310, 312, 320 and 321 are of similar import. Of these I think amendment No. 310 is the most comprehensive one.

(Amendments Nos. 310, 312, 320 and 321 were not moved.)

Mr. Vice-President: So, these amendments go. Then, we take up amendment No. 311.

(Amendment No. 311 was not moved.)

Mr. Vice-President: Amendment No. 313 is disallowed as being verbal. Amendment No. 314. Dr. Ambedkar.

Shri H. V. Kamath: Mr. Vice-President, Sir, may I ask whether this is not merely a verbal or at best a formal amendment liable to be disallowed? It merely seeks to substitute the words 'State funds' in place of the words 'the revenues of the State'.

Mr. Vice-President: I shall keep that in mind. Dr. Ambedkar, will you please deal with that point also?

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

[The Honourable Dr. B. R. Ambedkar]

"That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the words 'the revenues of the State' the words 'State funds' be substituted."

The reason why the Drafting Committee felt that the words "the revenues of the State" should be replaced by the words "State funds" is a very simple thing. In the administrative parlance which has been in vogue in India for a considerably long time, we are accustomed to speak of revenues of a Provincial Government or revenues of the Central Government. When we come to speak of local boards or district boards, we generally use the phrase local funds and not revenues. That is the terminology which has been in operation throughout India in all the provinces. Now, the honourable members of the House will remember that we are using the word 'State' in this Part to include not only the Central Government and the Provincial Governments and Indian States, but also local authorities, such as district local boards or taluka local boards or the Port Trust authorities. So far as they are concerned, the proper word is 'Fund'. It is therefore desirable, in view of the fact that we are making these Fundamental Rights obligatory not merely upon the Central Government and the Provincial Governments, but also upon the district local boards and taluka local boards, to use a wider phraseology which would be applicable not only to the Central Government, but also to the local boards which are included in the definition of the word 'State'. I hope that my honourable Friend Mr. Kamath will now understand that the amendment which I have moved is not merely verbal, but has some substance in it.

Sir, I move.

Mr. Vice-President: There is an amendment to amendment No. 314. That is amendment No. 40 in List I standing in the name of Pandit Thakur Das Bhargava. He is not here. Therefore, I need not discuss the relevancy or otherwise of this particular amendment. The next one is amendment No. 41 in List I, in the name of Shri Phool Singh. He is also absent. We now pass on to amendment No. 315 standing in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir (Bihar: Muslim): Sir, with your permission, I want to bring to your notice that I had one amendment No. 286. We have not decided anything about that amendment. Of course, the first part has been disallowed; the second part still remains.

Mr. Vice-President: I said that that will be put to the vote. Now, I cannot allow you to speak on that. If I make an exception in your favour, everybody else would claim the same right.

But, I think I have to make one point clear. This does not preclude the honourable Member from speaking on his amendment No. 286 if he gets a chance to speak while participating in the general discussion.

Mr. Mohd. Tahir: Sir, I beg to move!

"That in sub-clause (b) of clause (1) of article 9, for the words 'State or dedicated to the use of the general public' the words 'State or any local authority or dedicated to the use of the general public and any contravention of this provision shall be an offence punishable in accordance with law' be substituted."

Sir, in moving this amendment I submit that so far as the first part of my amendment is concerned, viz., the addition of 'local authority,' I do not press because the definition which has been given of 'State' includes local authority as well and therefore I do not press it. But so far as the penal clause is concerned, I will submit a few words and I will press it. Sir, in fact this article in our Constitution gives us a lesson that we should realise the equality of human beings as such and therefore it is necessary that some penal clause

should be added in this article. For your information I may bring it to your notice and to the notice of the House as well that in certain parts of our country as we know there are roads through which the people of scheduled castes and other low castes are not allowed to walk. In certain parts of our country we have found that if a scheduled caste man goes to draw water from the well, he immediately meets with his death. These are the sentiments which are working in the minds of certain sections of our country and therefore if we are really sincere that we are going to give relief to those who have been disregarded so long, then I submit that this penal clause must be added in this article. In view of this I hope that the whole House will agree, if at all they are sincere to give this relief to the general people, to add this penal clause and accept my amendment as such. With these few words, I move.

Mr. Vice-President: Amendments Nos. 316 to 319 not moved. No. 323 Prof. K. T. Shah.

Prof. K. T. Shah: Sir, I beg to move:

"That at the end of clause (2) of article 9, the following be added :—
'or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment.' "

The clause, as it is, stands thus :—

"Nothing in this article shall prevent the State from making any special provision for women and children."

Sir, it must be distinguished from the preceding article. I read it, at any rate, that this is a provision for discrimination in favour of women and children, to which I have added the Scheduled Castes or backward tribes. This discrimination is in favour of particular classes of our society which, owing to an unfortunate legacy of the past, suffer from disabilities or handicaps. Those, I think, may require special treatment; and if they do require it, they should be permitted special facilities for some time so that real equality of citizens be established.

The rage for equality which has led to provide equal citizenship and equal rights for women has sometimes found exception in regard to special provisions that, in the long range, in the interest of the country or of the race, exclude women from certain dangerous occupations, certain types of work. That, I take it, is not intended in any way to diminish their civic equality or status as citizens. It is only intended to safeguard, protect or lead to their betterment in general; so that the long-range interests of the country may not suffer.

In regard to the scheduled castes and backward tribes, it is an open secret that they have been neglected in the past; and their rights and claims to enjoy and have the capacity to enjoy as equal citizens happens to be denied to them because of their backwardness. I seek therefore by this motion to include them also within the scope of this sub-clause (2), so that any special discrimination in favour of them may not be regarded as violating the basic principles of equality for all classes of citizens in the country. They need and must be given, for some time to come at any rate, special treatment in regard to education, in regard to opportunity for employment, and in many other cases where their present inequality, their present backwardness is only a hindrance to the rapid development of the country.

Any section of the community which is backward must necessarily impede the progress of the rest; and it is only in the interest of the community itself, therefore, that it is but right and proper we should provide facilities so that they may be brought up-to-date so to say and the uniform progress of all be forwarded.

I have, of course, not included in my amendment the length of years, the term of years for which some such special treatment may be given. That may

[Shri Raj Bahadur]

be determined by the circumstances of the day. I only want to draw your attention to the fact that there are classes of our citizens who may need, through no fault of theirs, some special treatment if equality is not to be equality of name only or on paper only, but equality of fact. I trust this will commend itself to the House and the amendment will be accepted.

Mr. Vice-President: Now the article is open for general discussion. I call upon Mr. Raj Bahadur of Matsya Union to speak.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, as you announced to-day in this House that amendments Nos. 280, 282 and 279 would be taken up for discussion, I studied them again and a new meaning, which did not occur to me previously, disclosed itself to me. In amendment No. 280 which was moved by my Friend Syed Abdur Rouf, the words used are "place of birth", whereas in the amendment that was to be moved by Mr. Prabhu Dayal, the word 'descent' also occurs. It is unfortunate that that amendment of Mr. Prabhu Dayal has not been moved. Even so, when we study the article we observe that whereas discrimination is sought to be eliminated on other grounds, nothing has been said about the discrimination on the basis of descent, on the basis of privileges enjoyed by some on account of their dynastic or family status. I, therefore, suggested an amendment to amendment No. 280, to the effect that the words "place of" be deleted, from the words sought to be inserted in the article by the amendment No. 280. It is clear that the words "place of" occurring before the word "birth" have restricted and limited the meaning of the whole amendment to the "place of residence" only. Therefore, if the words 'place of' are deleted, we may achieve a double objective. Firstly that the word 'birth' when it occurs in the context of the whole article would imply not only residence, but also "descent", and as such the purpose which was contemplated by the mover of the amendment 282 shall be satisfied.

Mr. Vice-President: I said this would be a general discussion but you are putting forward your amendments; I can hardly allow that. You can speak upon the whole clause and incidentally refer to your amendment. Kindly excuse me if I ask you to carry out my wish and speak on the article generally.

Shri Raj Bahadur: Yes, Sir. What occurs to me is this. We have seen it in the past and even at present, in the matter of distribution of offices and appointments in the State or in the matter of rights and privileges enjoyed on the basis of property etc., that there has been some discrimination on account of "descent"; on account of dynasty or family status as also on account of factors of an allied nature. It is my humble submission that when we are here to forge our constitution, we should eliminate all sorts of distinctions arising on the basis not only of religion, caste, sex etc. but also on the basis of family and descent. While I agree that the purpose and the idea that is covered by amendment No. 280 is necessary, I would also suggest that something must be put in this article which may obviate all possibilities of, and eliminate all chances of discrimination, favouritism, or nepotism, on the basis of birth or descent. It is common experience, rather it is a kind of grievance with most of us that in the distribution of offices and appointments of the State and also in the services, some discrimination is observed on the basis of birth and descent. We see it in the recruitment to the Air Force, and to some extent in the Army or elsewhere in the services of the Government. It is a grievance with us that people who are better placed and who happen to be born with a silver spoon in their mouth get better chances than those born in mud huts or cottages in the villages. All must, however, have equal chances.

There is to be a provision in the Constitution to the effect that there shall be Raj Pramukhs and not Governors, in the States and the States' Unions and in this we observe there would be discrimination again on the basis of birth or descent, on the basis of one's being a prince or a member of a royal family or not. That sort of discrimination also should be eliminated. In fact all such discriminations should be eliminated.

Shri S. Nagappa (Madras: General): Mr. Vice-President, Sir, this clause as a whole gives independence, especially to the class for which this amendment is intended. I think you are aware that as a result of the hard labour and struggle under the leadership of Mahatma Gandhi, the country has become free politically. But this particular section of the population is doubly free, in that it is not only politically free, but it is also socially free. I hope the Honourable Pandit Jawaharlal Nehru who is the true successor of Mahatma Gandhi will see to it that we in this section of the population are made economically free too and are elevated. Freedom means political, social and economic freedom. Two aspects of freedom have been covered by this particular amendment, thanks to the efforts of Gandhiji who has brought about such a social revolution.

I would have been much more pleased, if this clause which intends to give social rights to this particular community had been more expansive and explanatory. Take for instance, the question of access to shops. Shops means places where you can purchase things by paying money. But there are places where you can purchase service. I would like to know if these places are also included in the word 'shop'. When I go to a barber's shop or a shaving saloon, I do not buy anything concrete, but I purchase labour. So also laundries. There I purchase the services of a washerman. I would like to know from the honourable the Mover if the word 'shop' includes all these kinds of places like laundries and saloons.

I come to clause (b) where reference is made to places of public resort maintained wholly or partly out of the revenues of the State. But what about other places which are not maintained either partly or wholly out of the revenues of the State? I would request that these words "maintained wholly or partly out of the revenues of the State" to be deleted. That would be better. Anyway, I would like to get some explanation from the mover of this clause as to what places are covered by this clause. I am glad of the social revolution brought about by Mahatma Gandhi, within such a short period of years, from 1932 to 1948—only 16 years. Within this short period age-long disabilities and sufferings have been removed. I am confident that it will not take much time, especially with a statutory provision of this sort to carry the reform further. I hope that the Prime Ministers in the provinces would take note of this particular provision and see that before the Act is adopted, even the remaining disabilities vanish away without waiting for the adaptation of this Act.

The third aspect of freedom remains, that is, economic freedom, and I hope that our Prime Minister will look to the economic elevation of the downtrodden classes. I support the clause whole-heartedly, and in doing so, request the mover to explain whether the word shop includes places of the kind I have referred to, and also whether places of public resort include places like burial or cremation grounds. These are not maintained out of public revenues or by public bodies, they being generally maintained by religious bodies. I would like to know whether there is to be a separate burial or cremation ground for these unfortunate sons of the soil, or whether all aspects are covered by this clause. I have raised this point so that these points may go down in the record of the proceedings of the House and be useful, if some lawyer were to

misinterpret the meaning of the clause in some court of law. Most of our courts are courts of law and not justice. One should be more correct in framing the clause. I would like to know whether the honourable the Mover has considered this aspect of the matter. If he can include these words now I shall be pleased: otherwise if he can come forward and explain whether these disabilities are covered I shall be satisfied. At least it will be on record of the proceedings of this House, so that lawyers who attempt to misrepresent . . . . . .

Shri K. Hanumanthaiya (Mysore State): Sir, I take objection to the honourable Member's remarks about lawyers that they are used to "misrepresenting".

Mr. Vice-President: I would ask Mr. Nagappa not to try to answer the honourable Member.

Shri S. Nagappa: I am not abusing lawyers. I am only saying what they are doing.....

Shri K. Hanumanthaiya: That is worse.

Mr. Vice-President: Mr. Nagappa is not carrying out my request.

Shri S. Nagappa: Besides wells and tanks there are other places where one can draw water. I would like to have a full explanatory answer from the honourable the Member.

Sardar Bhopinder Singh Man (East Punjab: Sikh): *[Mr. Vice-President, I feel that the Fundamental Rights, which are being conceded, will be incomplete if places of worship are not included in the list. It is often seen in life in India that the doors of many temples and other places of worship, meant for the public use, are not kept open for all sections of people by their custodians or Pujaris. This is a dark aspect; its prevalence has reduced these centres of love and fellow-feeling into breeding grounds for communalism and mutual hatred. This begets ill-will and hatred against one another. The greatest achievement of the Father of the Nation was to have the gates of temples opened for the untouchables. Today, we have yet to fulfil those expectations. An argument may be advanced that people, who are not aware of the ways to be followed and of the reverence to be shown there, cannot be allowed entry into temples or the places of worship. But my answer to that would be that if any such person wants to visit a temple, due precaution should be taken about him. But there is no reason for the discrimination, that one person may be allowed entry while another is stopped from doing so. I say this gap should be filled up, and this stigma should be removed from the face of India. These barriers of religion, which divide people of India from one another, should be uprooted for ever. Therefore, I wish that this lacuna should be removed by accepting the amendment of Prof. K. T. Shah or amendments Nos. 296 and 297.]

Mr. Mohd. Tahir: Sir, this article says:

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them.

In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment."

In this connection I have my amendment in which I have suggested that after the word 'hotels' the words "*Dharamsalas, Musafirkhanas*" be added. Sir we find that these two institutions are regularly run throughout our country by private funds. If a traveller who is in need of accommodation happens, fortunately or unfortunately, to be a scheduled caste or any other caste man who is not liked by the management of the *Dharamsala* he is not allowed to

halt in the *Dharamsala*. And so is the case in respect to Musafirkhanas also. Therefore I submit that these words "*Dharamsalas, Musafirkhanas*" should be added after the word "hotels".

Prof. Shibban Lal Saksena (United Provinces: General): Sir, this article should not have been put in this form. I would have wished that only the first three lines of this clause remained in the Draft and the rest were omitted. "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them," should be enough; by adding the sub-clauses we are really subtracting from the generality of the first clause. I personally also think that after we have provided for the abolition of untouchability under article 11, this particular sub-clause providing for the elimination of disabilities in regard to tanks, wells and roads is unnecessary. So far as such disabilities arise from untouchability, nobody will henceforward be able to practise them. Under article 11 no one can discriminate against any person on the ground of untouchability, as it has been made an offence punishable by law. I personally feel that the clause about the use of wells, tanks, roads, etc., does not seem to be worthy of finding a place in our constitution; for such disabilities as exist are merely transitory and will vanish with time. But if it becomes permanently incorporated in the constitution people in other parts of the world will despise us for the existence of such discrimination in the past. Article 11 is in fairly wide terms, so that every discriminatory action which is supposed to be due to untouchability will be forbidden. I therefore think that these sub-clauses are unnecessary and all these amendments would not have been moved if we had confined the article to the first three lines only. I may also point out the revolutionary character of this article. I know that there are hundreds of Hindu shops where food is served to Hindus only. Food is a matter where Hindus have got special habits and they generally will not allow anybody to enter the place where they eat food. I hope that the Hindu society will realise that they have now to change those habits and that anybody who is not a Hindu will be able to enter these shops or hotels where so far food is served to Hindus only. I think this is a very serious thing because henceforth it will be a fundamental right of every citizen to enter any Hindu Hotel. Anybody can now claim entry to any place where food is sold. I therefore think that we must prepare the ground to give effect to this change which is of a far-reaching character. Otherwise, there will be clashes every day. I wish this clause (a) were kept as a directive principle of State Policy and were not made a fundamental right. That would have given the necessary time to Hindu Society to adjust itself to the needs of the situation. This portion of the article is particularly unnecessary in view of article 11 which provides for the banning of untouchability

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. Vice-President, Sir, I consider this sub-clause—sub-clause (b) of article 9—an important clause. I see that under this clause "places of public resort" cover places of amusements and the like and therefore there is no necessity to mention all the places like theatres and cinemas. Personally I feel that gardens and all these things are covered by this word "resort". It has been suggested that the words "places of worship" should also be included here. So long as this country has many religions I do not think it advisable to insert these words in this clause. It can be done only when we attain one religion in this country.

But there is one point to which I would like to draw the attention of the mover of the article. The words used here are "the use of wells, tanks, roads and places of public resort...." Ordinarily what we mean by "public" is every person or collection of persons of all communities, irrespective of caste or creed. But while I was referring to the Indian Penal Code I found the word

* [ ] Translation of Hindustani speech.

[Shri R. K. Sidhwa]

"public" is defined in a restricted manner. Section 12 of the Indian Penal Code says that the word "public" includes "any class of the public or any community . . ." The description "any class of the public" means that a Sanatani will be a "class of the community". The definition of the word 'public' is in such a restricted manner that if a well is to be dug by a Sanatani in a village he will not allow the use of that well to the reformist or the scheduled caste. I do not know whether the attention of the honourable Mover has been drawn to this. I am only giving an illustration about one community. The Hindu will not allow the Muslim to draw water from that well, or *vice versa*. It may be said that this relates to the offences caused under the Indian Penal Code. But the Indian Penal Code relates to so many other offences. I do not know whether there is another Act where the word "public" is defined collectively irrespective of any cast or community. I had tabled an amendment also and I do wish that this should not be left in any ambiguity because this is the fundamental, the basis, on which we are protecting the rights of every citizen. For any breach of the fundamental right anybody can go to a court. Why should we leave it ambiguous and allow the public to go to the Supreme Court for getting the meaning of the word "public" defined? Why should we not make it very clear here and say that "public" means everyone irrespective of caste or creed, particularly when you have a restricted definition in the Penal Code? I therefore submit, with due respect to the knowledge of the legal luminaries, that this matter should be made clear. To me, to every layman the meaning of the word 'public' is clear; but we find the meaning different in the law books. This matter therefore requires explanation to avoid any kind of complication in the future.

(One or two honourable Members rose to speak.)

Mr. Vice-President: You must forgive me if I am unable to meet the wishes of honourable Members. I want the full co-operation of the House and I ask it specially just now. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, dealing with the amendments which have been moved, I accept Amendment No. 280 moved by Mr. Rouf.

Shri Syamanandan Sahaya (Bihar: General): Will the honourable Member give his views also about amendments which have not been moved?

The Honourable Dr. B. R. Ambedkar: I am very sorry I cannot give opinions regarding amendments which have not been moved.

Shri Syamanandan Sahaya: It was no fault of the member concerned.

The Honourable Dr. B. R. Ambedkar: I cannot help it. I accept the amendment of Mr. Rouf adding the words "place of birth". I also accept the amendment (No. 37 in List I) by Mr. Subramaniam to amendment No. 276 dropping the words "In particular" in clause (1) of article 9.

With regard to amendment No. 303 moved by Mr. Guptanath Singh, I am prepared to accept his amendment provided he is prepared to drop the word "kunds" from his amendment.

Shri Guptanath Singh: I have already done that, Sir.

The Honourable Dr. B. R. Ambedkar: Then, among the many amendments which I am sorry I cannot accept, I think it is necessary for me to say something about two of them. One is amendment No. 315 moved by Mr. Tahir which requires that any contravention of the provisions contained in article 9 should be made a crime punishable by law. My Friend Mr. Tahir who moved this amendment referred particularly to the position of the untouchables and he said that in regard to these acts which prevent the untouchables from sharing equally the privileges enjoyed by the general public, we will not be

successful in achieving our purpose unless these acts, preventing them from using places of public resort, were made offences. There is no doubt that there is no difference of opinion between him and other Members of this House in this matter because all of us desire that this unfortunate class should be entitled to the same privileges as members of the other communities without any let or hindrance from anybody. But he will see that that purpose is carried out entirely by the provisions contained in article 11 which specifically deals with untouchability: instead of leaving it to Parliament or to the State to make it a crime, the article itself declares that any such interference with their rights shall be treated as an offence punishable by law. If his view is that there should be a provision in the Constitution dealing generally with acts which interfere with the provisions contained in article 9, I would like to draw his attention to article 27 in the Constitution which places an obligation on Parliament to make laws declaring such interferences to be offences punishable by law. The reason why such power is given to Parliament is because it is felt that any offence which deals with the Fundamental Rights should be uniform throughout the territory of India, which would not be the case if this power was left to the different States and Provinces to regulate as they like. My submission therefore is that, so far as this point is concerned, the Constitution contains ample provision and nothing more is really necessary.

With regard to amendment No. 323 moved by Professor K. T. Shah, the object of which is to add "Scheduled Castes" and "Scheduled Tribes" along with women and children, I am afraid it may have just the opposite effect. The object which all of us have in mind is that the Scheduled Castes and Scheduled tribes should not be segregated from the general public. For instance, none of us, I think, would like that a separate school should be established for the Scheduled Castes when there is a general school in the village open to the children of the entire community. If these words are added, it will probably give a handle for a State to say, 'Well, we are making special provision for the Scheduled Castes'. To my mind they can safely say so by taking shelter under the article if it is amended in the manner the Professor wants it. I therefore think that it is not a desirable amendment.

Then I come to my Friend Mr. Nagappa. He has asked me to explain some of the words which have been used in this article. His first question was whether "shop" included laundry and shaving saloon. Well, so far as I am concerned, I have not the least doubt that the word 'shop' does include laundry and shaving place. To define the word 'shop' in the most generic term one can think of is to state that 'shop' is a place where the owner is prepared to offer his service to anybody who is prepared to go there seeking his service. A laundryman therefore would be a man sitting in his shop offering to serve the public in a particular respect, namely, wash the dirty cloths of a customer. Similarly, the owner of a shaving saloon would be sitting there offering his service for any person who enters his saloon.

The Honourable Shri B. G. Kher (Bombay: General): Does it include the offices of a doctor and a lawyer?

The Honourable Dr. B. R. Ambedkar: Certainly it will include anybody who offers his services. I am using it in a generic sense.

I should like to point out therefore that the word 'shop' used here is not used in the limited sense of permitting entry. It is used in the larger sense of requiring the services if the terms of service are agreed to.

The second question put to me was whether 'place of public resort' includes burial grounds. I should have thought that very few people would be interested in the burial ground, because nobody would care to know what happens to him after he is dead. But, as my Friend Mr. Nagappa is interested in the point

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should say that I have no doubt that a place of public resort would include a burial ground subject to the fact that such a burial ground is maintained wholly or partly out of public funds. Where there are no burial grounds maintained by a municipality, local board or taluk board or Provincial Government or village panchayat, nobody of course has any right, because there is no public place about which anybody can make a claim for entry. But if there is a burial ground maintained by the State out of State funds, then obviously every person would have every right to have his body buried or cremated therein.

Then my Friend asked me whether ponds are included in tanks. The answer is categorically in the affirmative. A tank is a larger thing which must include a pond.

The other question that he asked me was whether rivers, streams, canals and water sources would be open to the untouchables. Well, rivers, streams and canals no doubt would not come under article 9; but they would certainly be covered by the provisions of article 11 which make any interference with the rights of an untouchable for equal treatment with the members of the other communities an offence. Therefore my answer to my Friend Mr. Nagappa is that he need have no fears with regard to the use of rivers, streams, canals, etc., because it is perfectly possible for the Parliament to make any law under Article 11 to remove any such disability if found.

Shri S. Nagappa: What about the courses of water?

The Honourable Dr. B. R. Ambedkar: I cannot add anything to the article at this stage. But I have no doubt that any action necessary with regard to rivers and canals could be legitimately and adequately taken under article 11.

Shri R. K. Sidhwa: What about the interpretation of the word 'public'?

The Honourable Dr. B. R. Ambedkar: My Friend Mr. Sidhwa read out some definition from the Indian Penal Code of the word 'public' and said that the word 'public' there was used in a very limited sense as belonging to a class. I should like to draw his attention to the fact that the word 'public' is used here in a special sense. A place is a place of public resort provided it is maintained wholly or partly out of State funds. It has nothing to do with the definition given in the Indian Penal Code.

Shri Mahavir Tyagi (United Provinces: General): May I know what is to happen to the amendments which have been declared by you as verbal amendments? Among them I fear there are some which really aim at making a substantial change in the meaning of the clause or article concerned.

Mr. Vice-President: In that matter I am the sole judge. You have given me discretionary power and I propose to exercise that power in my own way.

Shri Mahavir Tyagi: I want information. I do not dispute your judgment or your right. I only want to know whether the sense of the House will be accommodated in regard to the amendments ruled out or whether such amendments will be considered by the Drafting Committee or some other body? My suggestion is that you will be doing well the House if you will kindly appoint a small sub-committee which will go into these verbal amendments and find out whether some of them at least aim at effecting a change in the meaning of the clause concerned. I do not dispute what you said. They are out of order because you have ruled them as such. But even commas and fullstops have some value. My only request is that . . . . . .

Mr. Vice-President: May I suggest a better way which might appeal to you, a way which is better than the appointment of a sub-committee? Those who

think that their amendments are of some substance may approach the Drafting Committee directly themselves. If they do so I am sure due consideration will be shown to them.

Shri Mahavir Tyagi: Now I am satisfied, Sir.

Mr. Mohd. Tahir: As the Honourable Dr. Ambedkar has answered my points to my satisfaction with regard to amendment No. 315, I ask for leave to withdraw it.

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

Mr. Vice-President: Now I will put the rest of the amendments to the vote of the House. Dr. Ambedkar has accepted the first one.

The question is:

"That for amendment No. 276 in the List of Amendments, the following be substituted -

'That the second para. of clause (1) of article 9 be numbered as new clause (1a), and the words 'In particular' in the new clause so formed, be deleted.' "

The motion was adopted.

Mr. Vice-President: The next amendment is 279. The question is:

"That in article 9, after the word 'race' the word 'birth' be inserted."

The amendment was negatived.

Mr. Vice-President: The next one is No. 280 which, I understand, Dr. Ambedkar has accepted. The question is:

"That in article 9, after the word 'sex' wherever it occurs, the words 'place of birth' be inserted."

The amendment was adopted.

Mr. Vice-President: Then we come to the second part of amendment No. 286. The question is:

"That in sub-clause (a) of clause (1) of article 9, after the words 'restaurants, hotels' the words 'Dharamsalas, Musafirkhanas' be inserted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 293. The question is:

"That in clause (1) of article 9, for sub-clauses (a) and (b) the following be substituted :—

'any place of public use or resort, maintained wholly or partly out of the revenues of the State, or in any way aided, recognised, encouraged or protected by the State, or place dedicated to the use of general public like schools, colleges, libraries, temples, hospitals, hotels and restaurants, places of public entertainment, recreation or amusement, like theatres and cinema-houses or concert-halls; public parks, gardens or museums; roads, wells, tanks or canals; bridges, posts and telegraphs, railways, tramways and bus services; and the like.' "

The amendment was negatived.

Mr. Vice-President: Then we come to amendment No. 296. The question is:

"That in sub-clause (a) of clause (1) of article 9, after the words 'of Public entertainment' the words 'or places of worship' be inserted."

The amendment was negatived.

Mr. Vice-President: I do not remember what happened to 299. To be perfectly sure, I am going to put it to the vote. The question is:

"That in sub-clause (a) of clause (1) of article 9, the word 'public' be deleted."

The amendment was negatived.

Mr. Vice-President: Then amendment No. 301 standing in the name of Mr. Tajamul Husain. The question is:

"That in sub-clause (a) of clause (1) of article 9, between the words 'public' and 'restaurants' the words 'places of worship' Dharámsalas, Musafirkhanas' be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 303 as revised. I understand that Dr. Ambedkar has accepted it. The question is:

"That in sub-clause (b) of the second paragraph of clause (1) of article 9, after the word 'wells, tanks' the words 'bathing ghats' be inserted."

The amendment was adopted.

Mr. Vice-President: Then amendment No. 305. The question is:

"That in sub-clause (b) of clause (1) of article 9, after the word 'roads' add a comma and also the words 'hospitals, educational institutions'."

The amendment was negatived.

Mr. Vice-President: Amendment No. 314. The question is:

"That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the words 'the revenues of the State' the words 'State funds' be substituted."

The amendment was adopted.

Mr. Vice-President: Then the last amendment standing in the name of Professor Shah. No. 323. The question is:

"That at the end of clause (2) of article 9, the following be added :—

'or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment.' "

The amendment was negatived.

Mr. Vice-President: Now, I shall put the article as revised to the vote. The question is:

That article 9, as amended, form part of the Constitution.

The motion was adopted.

Article 9, as amended, was added to the Constitution.

Article 10

Mr. Vice-President: Shall we pass on to the next article, new article 9-A? The amendments here are in the form of Directive Principles. I disallow them. Then we go to article 10.

Shri T. T. Krishnamachari (Madras: General): I think the idea is to hold this over.

The Honourable Dr. B. R. Ambedkar: I request you to hold this article over.

Mr. Vice-President: Then we may go to the next article, 10-A.

(Amendment No. 369 was not moved.)

Article 11

Mr. Vice-President: We now come to article 11. The motion before the House is that article 11 form part of the Constitution. We shall now take up the amendments one by one. No. 370 is out of order. Amendments Nos. 371, 372, 373 and also 375 and 378 are of a similar character. I suggest that amendment No. 375 be moved.

(Amendments No. 375 and No. 371 were not moved.)

Mr. Vice-President: No. 372. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

"That for article 11, the following article be substituted :—

'11. No one shall on account of his religion or caste be treated or regarded as an 'untouchable'; and its observance in any form may be made punishable by law.' "

I submit that the original article 11 is a little vague. The word "untouchability" has no legal meaning, although politically we are all well aware of it; but it may lead to a considerable amount of misunderstanding, as in a legal expression. The word 'untouchable' can be applied to so many variety of things that we cannot leave it at that. It may be that a man suffering from an epidemic or contagious disease is an untouchable; then certain kinds of food are untouchable to Hindus and Muslims. According to certain ideas women of other families are untouchables. Then according to Pandit Thakurdas Bhargava, a wife below 15 would be untouchable to her loving husband on the ground that it would be 'marital misbehaviour'. I beg to submit, Sir, that the word 'untouchable' is rather loose. That is why I have attempted to give it a better shape; that no one on account of his religion or caste be regarded as untouchable. Untouchability on the ground of religion or caste is what is prohibited.

Then, Sir, I have one more word to say in this connection and that is that in line 3 of this clause in the midst of the sentence, the word 'Untouchability' begins with a capital letter. This is a matter for the Drafting Committee.

(Amendments 373 and 378 were not moved.)

Mr. Vice-President: Amendments Nos. 374, 376, 377, 379, 380 and 381 I regard as verbal amendments and they are disallowed. Amendment No. 372 alone is moved. The article is now open for general discussion. I call upon Mr. Muniswamy Pillai to speak.

Shri V. I. Muniswamy Pillai (Madras: General): Mr. Vice-President, it is a matter of great satisfaction that this Constitution has brought out a very important item and thereby untouchability is to be abolished in this great land of ours. Sir, though article 9 concedes many of the facilities that are required for the abolition of untouchability, the very clause about untouchability and its abolition goes a long way to show to the world that the unfortunate communities that are called 'untouchables' will find solace when this Constitution comes into effect. It is not that a certain section of the Indian community that will be benefited by this enactment, but a sixth of the population of the whole of India will welcome the introduction and the adoption of a section to root out the very practice of untouchability in this country. Sir, under the device of caste distinction a certain section of people have been brought under the rope of untouchability, who have been suffering for ages under the tyranny of the so-called caste Hindus and all those people who style themselves as landlords and zamindars, and were thus not allowed the ordinary rudimentary facilities required for a human being. The sting of untouchability went deep into the hearts of certain sections of the people and many of them had to leave their own faiths and seek protection under religions which were tolerant. I am sure, Sir, by the adoption of this clause many a Hindu who is a Harijan, who is a scheduled class man will feel that he has been elevated in society and he has now got a place in society. I am sure that the whole country will welcome the inclusion of article 11 in this Constitution.

Dr. Monomohon Das (West Bengal: General): Mr. Vice-President, Sir, this clause about untouchability is one of the most important of the fundamental

[Dr. Monomohon Das]

rights. This clause does not propose to give any special privileges and safeguards to some minority community, but it proposes to save one-sixth of the Indian population from perpetual subjugation and despair, from perpetual humiliation and disgrace. The custom of untouchability has not only thrown millions of the Indian population into the dark abyss of gloom and despair, shame and disgrace, but it has also eaten into the very vitality of our nation. I have not a jot of doubt, Sir, that this clause will be accepted by this House unanimously; not only the Indian National Congress is pledged to it, but for the sake of fairness and justice to the millions of untouchables of this land, for the sake of sustaining our goodwill and reputation beyond the boundaries of India, this clause which makes the practice of untouchability a punishable crime must find a place in the Constitution of free and independent India. I refuse to believe, Sir, that there is even a single soul in this august body who opposes the spirit and principle contained in this article. So, I think, Sir, that today the 29th November 1948 is a great and memorable day for us the untouchables. This day will go down in history as the day of deliverance, as the day of resurrection of the 5 crores of Indian people who live in the length and breadth of this country. Standing on the threshold of this new era, at least for us, the untouchables, I hear distinctly the words of Mahatma Gandhi, the father of our nation, words that came out from an agonized heart, full of love and full of sympathy for these down-trodden masses. Gandhiji said: "I do not want to be reborn, but if I am reborn, I wish that I should be born as a Harijan, as an untouchable, so that I may lead a continuous struggle, a life-long struggle against the oppressions and indignities that have been heaped upon these classes of people." The word Swaraj will be meaningless to us if one-fifth of India's population is kept under perpetual subjugation. Mahatma Gandhi is no more among us in the land of the living. Had he been alive today, no mortal on earth would be more pleased, more happy, more satisfied than him. Not only Mahatma Gandhi, but also the other great men and philosophers of this ancient land, Swami Vivekananda, Rāja Ram Mohan Roy, Rabindranath Tagore and others who led a relentless struggle against this heinous custom, would also be very much pleased today to see that Independent India, Free India has at last finally done away with this malignant sore on the body of Indian society. As a Hindu, I believe in the immortality of the soul. The souls of these great men, but for whose devotion and life-long service India would not have been what she is today, would be smiling upon us at this hour at our courage and boldness in doing away with this heinous custom of untouchability.

Last of all, I cannot resist the temptation of saying a few words about our great and eminent Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. It is an irony of fate that the man who was driven from one school to another, who was forced to take his lessons outside the class room, has been entrusted with this great job of framing the Constitution of free and independent India, and it is he who has finally dealt the death blow to this custom of untouchability, of which he was himself a victim in his younger days.

Sir, I thank you for giving me this opportunity to express my views on this matter.

Shri Santanu Kumar Das (Orissa: General): *[Mr. Vice-President, I am grateful to you, Sir, for giving me an opportunity to express my views on clause 11 of the Draft Constitution.

This clause is intended to abolish the social inequity, the social stigma and the social disabilities in our society. Every body desires that the practice of

* [ ] Translation of Hindustani speech.

untouchability should somehow be abolished but no body appears to be very helpful in its abolition. When everybody desires that this practice should be abolished, I fail to see why so much time should be wasted in a long discussion over it. The fact is that we merely want to enact laws about it and expect the rural people to observe these laws. We must ourselves first observe the law for otherwise there would be no sense in asking others to act upon it. If we fail to observe it, it would be impossible to root out this evil. Provincial Governments enact laws for the welfare of the Harijans; they pass bills for the removal of untouchability, for the removal of disabilities and for permitting temple-entry but you will be surprised, Sir, if I tell you that our members act as fifth columnists in the rural areas, for they tell the people there that these laws are not in force and thus they themselves act against the law. I would request the Members of the House to try their best to make the law effective so that this present social inequity in the country may be removed. Sir, I support the clause whole-heartedly.]

Shrimati Dakshayani Velayudhan (Madras: General): Mr. Vice-President, Sir, we cannot expect a Constitution without a clause relating to untouchability because the Chairman of the Drafting Committee himself belongs to the untouchable community. I am not going into the details of the history and the work done by all the religious heads from time immemorial. You know that all the religious teachers were against the practice of untouchability. Coming to a later period, we found a champion in the person of Mahatma Gandhi and one of the items of the constructive programme that he placed before the country is the abolition of untouchability. While I was a student in the College, one of my class-mates approached me for subscribing to a fund for the abolition of untouchability. My reply was, 'you people are responsible for this and therefore it is for you to raise the money and it is not proper that you should ask me for money'. Even from my younger days, the very thought of untouchability was revolting to me. Even in public places like schools, untouchability was observed whenever there was a tea party or anything of that kind. What I did on those occasions was that I always non-co-operated with those functions. The change of heart that we find in the people today is only due to the work that has been done by Mahatma Gandhi and by him alone. We find that there is a vast change in the outlook and attitude of the people today towards the untouchables. Nowadays what we find is that the people who are called caste Hindus dislike the very idea of, or the very term, 'untouchability' and they do not like to be chastised for that, because, they have taken a vow that they are responsible for it and that they will see that it is abolished from this land of ours. Even though there is a large improvement on the part of the so-called caste Hindus, we cannot be satisfied with that. When this Constitution is put into practice, what we want is not to punish the people for acting against the law, but what is needed is that there should be proper propaganda done by both the Central and Provincial Governments. Then only there will be improvement that we want. If the Provincial and Central Governments had taken action previously I think there would have been no necessity for an article of this kind in this Constitution. Last year I brought a resolution before the Constituent Assembly for declaring that untouchability should be made unlawful. When I approached Panditji, he said that this is not a Congress Committee to move such a resolution, and that it will be taken up in course of time. My reply was that if a declaration was made in the Constituent Assembly, it will have a great effect. Even people in South Africa were chastising us because we were having this practice here. If a declaration is made by the Assembly here and now, it will have a great effect on the people and there will be no necessity for us to incorporate such a clause in the Constitution.

Mr. Vice-President: You have exceeded the time-limit. It is only because you are a lady I am allowing you.

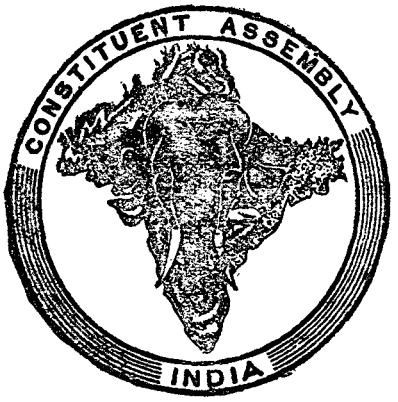
Shrimati Dakshayani Velayudhan: The working of the Constitution will depend upon how the people will conduct themselves in the future, not on the actual execution of the law. So I hope that in course of time there will not be such a community known as Untouchables and that our delegates abroad will not have to hang their heads in shame if somebody raises such a question in an organisation of international nature.

Prof. K. T. Shah: Mr. Vice-President, Sir, lest I be misunderstood on the remarks that will follow, may I say at the very outset that I am not against the spirit of this article, or even its actual wording. I think, however, that the wording is open to some correction; and if the Honourable the Chairman of the Drafting Committee will consider what I am going to place before him just now, and before the House, I believe he might find room for some amendment himself of this article.

In the first place I would like to point out that the term 'untouchability' is nowhere defined. This Constitution lacks very much in a definition clause; and consequently we are at a great loss in understanding what is meant by a given clause and how it is going to be given effect to. You follow up the general proposition about abolishing untouchability, by saying that it will be *in any form* an offence and will be punished at law. Now I want to give the House some instances of recognised and permitted untouchability whereby particular communities or individuals are for a time placed under disability, which is actually untouchability. We all know that at certain periods women are regarded as untouchables. Is that supposed to be, will it be regarded as an offence under this article? I think if I am not mistaken, I am speaking from memory, but I believe I am right that in the Quran in a certain 'Sura', this is mentioned specifically and categorically. Will you make the practice of their religion by the followers of the Prophet an offence? Again there are many ceremonies in connection with funerals and obsequies which make those who have taken part in them untouchables for a while. I do not wish to inflict a lecture upon this House on anthropological or connected matters; but I would like it to be brought to the notice that the lack of any definition of the term 'untouchability' makes it open for busybodies and lawyers to make capital out of a clause like this, which I am sure was not the intention of the Drafting Committee to make.

One more example I will give, Sir, which is of a hygienic, or rather sanitary, character, that seems to be completely overlooked by the draftsman. What about those diseases, and people who suffer from, which are communicable, and so necessarily to be excluded and made untouchables while they suffer? I remember, Sir, the case of a very well-known personage who was suffering from leprosy, and whom consequently a Public Carrier Company refused to carry from a particular place to another place. All the wheels of Government were moved to obtain a certificate that he may be carried in the plane without any harm to other passengers. I do not know whether it was his cheque-book or his munificence that helped him to get over that particular disability. But I am sure the example should be a warning to our Drafting Committee. Again, if a municipality, for instance, makes a temporary regulation about Quarantine, and makes it necessary that people suffering from communicable diseases or infectious or contagious diseases shall be segregated for a while until they are cured, and shall be regarded as untouchables, will it be an offence under this article? Surely it ought not to be possible for anybody to

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 30th November 1948

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:

The Honourable Shri Krishna Ballabh Sahay (Bihar: General)

DRAFT CONSTITUTION—*contd.*

New Article 11-B.

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion on amendment No. 382. Shri Amiyo Kumar Ghosh.

Shri Amiyo Kumar Ghosh (Bihar: General): Mr. Vice-President, Sir, I do not wish to make a long speech on the subject that is before us, nor do I propose to oppose the principle involved in the amendment which was moved yesterday by my Friend Mr. Lari, but, Sir, I oppose its being incorporated in the Constitution. By incorporating such a clause in the Constitution, practically we fetter the hands of the State for all time to resort to such punishment even if it is required by the exigencies of time.

Sir, it is true that the punishment is inhuman, it is true that the judges may err and there is the chance of innocent persons being sent to the gallows, but at the same time we will have to bear in mind that society does not consist of unmixed good elements only. There are evil elements too, and in order to check those evil elements from usurping the society or overawing the society at any time, the State may require such penalties to be imposed on persons who want to terrorize the society.

I think that with the growth of consciousness, with the development of society, the State should revise a punishment of this nature, but the proper place of doing such a thing is not the Constitution. We can do it by amending the Indian Penal Code where such penalty is prescribed for different offences. We are now passing through a transitional period, serious problems are confronting us, different sorts of situations are arising every day, and so it is quite possible that at times the State may require imposition of such grave penalties for offences which may endanger it and the society. Therefore, Sir, on principle I agree that the capital punishment should be abolished, but the proper place for doing such a thing is not to provide a clause to that effect in the Constitution and tie the hands of the State, but it should be done by amending the Indian Penal Code or such other laws which impose such penalty. As I have already stated, the State may require the imposition of such penalties from the exigencies of circumstances and if such a clause is provided in the Constitution, the State will be unable to prescribe such a punishment without amending the constitution, which is a difficult matter.

Under these circumstances I oppose the amendment moved by Mr. Lari.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, the amendment moved by Mr. Lari is sponsored on the ground of consideration and following

[Shri K. Hanumanthaiya]

progressive ideas. The abolition of capital sentence is a matter open to argument, and I wish to differ from him. We have to look at this problem from two points of view: one from the point of view of the convict himself and the other from the point of view of the State. From the point of view of the convict, I had an idea that the convict would relish a life sentence in preference to execution. Some days back, I happened to read one of Bernard Shaw's dramas; it was a very good drama concerning the great heroine of France and there she prefers to be burnt alive rather than be kept in prison for a life time. He brings out that idea very beautifully in the drama, I had to change my opinion that the convict would prefer to be kept alive almost untouched by social intercourse and aloof behind the prison walls. The convict would any day prefer to go out of the world instead of being kept almost like a dead person behind the prison walls for a life time.

Then from the point of view of the State, a man who has no consideration for human lives does not deserve any consideration for his own life. Society is based not merely on reformation, but also on the fear instinct principle. To forget all other considerations except the question of reforming the convict does not hold the field and it has never held the field. If every man who takes away the life of another is assured that his life would be left untouched and it is a question of merely being imprisoned, probably the deterrent nature of the punishment will lose its value. The practice in prisons today is if a man is sentenced to life, he will be released, after concessions and remissions now and then given, in the course of about seven and a half years. Therefore, if a man who kills another is assured that he has a chance of being released after seven or eight or ten years, as the case may be, then everybody would get encouragement to pursue the method of revenge, if he has got any. For example, let us take this Godse incident.

Mr. Vice-President: No reference should be made to this particular individual.

Shri K. Hanumanthaiya: If a man who resorts to kill an important or a great man and if he is assured that he would be released after seven years or eight years, as the case may be, he would not hesitate to repeat what he has done, and conditions being what they are today, it would be very unwise from the point of view of the safety of the State and stability of society, to abolish capital sentence.

The Honourable Dr. B. R. Ambedkar (Bombay: General): I do not accept the amendment.

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

That after article 11 the following new article be inserted:—

"11—B. Capital punishment except for sedition involving use of violence is abolished."

The amendment was negatived.

Article 10

Mr. Vice-President: We can now go back to Article No. 10. The motion before the House is:

"That Article 10 form part of the Constitution."

I shall now go over the amendments and then we may have a general discussion.

Amendment No. 326 is verbal and is disallowed.

As regards No. 327, perhaps Mr. Tahir will meet the objection which has been held by some people that the amendment is unintelligible.

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

That in clause (1) of article 10, after the words "of employment" the word "acquisition" be inserted.

In this connection, I do not want to make any long speech. I simply want to mention that there are two aspects, one of employment and one of acquisition. Employment has already been mentioned; so I want that acquisition also should be added. That is all.

(No. 328 and No. 329 were not moved.)

Mr. Vice-President: Nos. 330 and 331 being verbal are disallowed.

(No. 332 was not moved.)

Amendments Nos. 333, 335 and 337 (first part), are the same. I can allow the first part of amendment No. 337.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I beg to move:

That clause (2) of article 10, for the words "on grounds only" the words "on grounds" be substituted.

It is really a motion for deletion of the word "only" which seems to be redundant or rather causing some difficulty. The same difficulty has been felt by a large number of Honourable Members, as is evidenced by several amendments to the same effect.

Mr. Vice-President: The next one is No. 334.

Shri Lokanath Misra (Orissa: General): Sir, I beg to move:

"That in clauses (2), (3) and (4) of article 10, be deleted."

On this matter I need not make a long speech. To my mind clause (1) covers all cases and clause (2) is definitely included in clause (1), and clause (3) which refers to reservation of appointments to backward classes is really unnecessary because it puts a premium on backwardness and inefficiency. Everybody has a right to employment, food, clothing, shelter and all those things, but it is not a fundamental right for any citizen to claim a portion of State employment, which ought to go by merit alone. It can never be a fundamental right. If we accept that as one, it may be generous but this generosity will itself be a degradation to those people who are favoured with it. I think clause (4) is quite unnecessary because ours being a secular State, it should keep its hands clean of all religious institutions and the State need not bother about the management of any religious institutions. Therefore, there should be no thought of reservation of appointments in committees with reference to those religious institutions which are outside the care of the State. For these reasons, I consider clauses (2), (3) and (4) unnecessary.

Mr. Vice-President: Amendments 336 and 341 are of similar import. I can allow 336 to be moved.

Mr. Naziruddin Ahmad: I beg to move:

That for clause (2) of Article 10, the following clause be substituted :—

"(2) Every citizen shall be eligible for office under the State irrespective of his religion, caste, sex, descent or place of birth."

I have slightly altered my amendment in consequence of the form 'the State' adhered to by the House.

The only reason for suggesting this amendment is that it is more direct in form.

Shri H. V. Kamath (C. P. and Berar: General): I do not move amendment No. 341, Sir.

Mr. Vice-President: Mr. Tahir may now move the second part of his amendment No. 338; the first part being verbal, I disallow it.

Mr. Mohd. Tahir: I move:

That in clause (2) of Article 10, after the words 'for any office', the words 'or employment' be inserted.

Sir, the clause as proposed to be amended by me would read:

"(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office or employment under the State."

It is very simple and clear that, so far as 'office' is concerned, the clause is all right. But, as regards employment which in my opinion means also employment elsewhere than in an office, there is no provision. I therefore think it necessary that the words 'or employment' should be added after 'office'. I hope the Mover will accept it.

Mr. Vice-President: Mr. Ananthasayanam Ayyangar may now move No. 342.

(Amendment No. 342 was not moved.)

Mr. Vice-President: Professor Shah may now move amendment No. 339.

Prof. K. T. Shah (Bihar: General): I beg to move:

That in clause (2) of Article 10, after the words 'place of birth' the words 'in India' be added.

The clause as proposed to be amended by me would read:

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth in India, or any of them be ineligible for any office under the State."

Sir, the object of moving this amendment is to point out that this country is vast enough to meet from her own resources of manpower all that is needed to fill any office of responsibility and trust with efficiency in this country. We have examples of other dominions and countries making an implied reservation in their countries; that is to say, reserving offices, reserving posts, and reserving employment primarily for their own citizens and so we shall not be lacking in models to copy or precedents to follow. I suggest that if these words 'in India' are added to the clause as it stands, it does not necessarily mean that discrimination shall be made against those not born in India. All that it wants to convey is that no discrimination shall be made against anybody born in India, on account of his place of birth. I consider this is not only a very reasonable suggestion, but also a very necessary one. In the short space of time that we have achieved this independence of ours, and given the influence that seems to be still working to pull us along the lines of commonwealth allegiance and association, we do not know how and where we may be getting to. Personally, I hold the view that by making a reservation of this kind, not only is no injustice or invidious discrimination intended, but what is necessary for our own protection, development and advancement can only be achieved by our own children, by the sons and daughters of the soil only. As such the first claim, a preferential claim for any available employment in this country, should be that of the natives of the land.

Sir, it is unnecessary to point out that the citizens or the nationals of this country have been discriminated against, and discriminated against very shamefully, in certain parts of the commonwealth as it is called now, like South Africa. Elsewhere, if they do not say so openly in the Constitution, if they do not say so by any specific legislation, they nevertheless maintain a policy of "White Australia", or White Canada, impliedly conveying the desire that coloured people are not wanted; or if they go there, they shall be under disabilities that will for ever handicap them.

If this is the experience that we are getting even today, even after achieving our independence. I do not see why we in this country should not also take

care, that our Constitution primarily and preferentially reserves all available places of employment, of trust, or responsibility for the children of the soil.

As I started by saying, this does not at all mean that you shall make a categorical discrimination against the citizens of other countries, though there are plenty of examples of that kind even in the existing Constitutions of some of the leading countries of the world. We would certainly not be starting on a new track altogether, even if we were to make a provision of that kind. Given the history that we have, given the suffering that we have endured, given the exclusion of our own countrymen from our public service in all branches by the foreigners who ruled and distorted the requirements of country's advancement, it would be, to me at any rate, not only nothing surprising, but nothing improper if we do make a categorical and positive provision, making a clear exception in the case of those who have exploited and abused their position in this country.

However, Sir, we have been told on good authority that we should let bye-gones be bye-gones, and that we must forget the unfortunate past of this kind. I personally would not be responsible for reviving unpleasant memories, if we can overcome them. It is, therefore, I want to add a clear injunction, that only those born in India, and owing allegiance to this country, shall get any place of responsibility or trust in this country. I would not, indeed, lay it down in the Constitution negatively, *i.e.*, I would not require that no one born outside India shall hold any place of trust or responsibility, profit or power in this country, however justified one may feel from past experience. But while that amount of liberalism may well be shown even by us in spite of our memories, I should certainly think that the reservation I am suggesting is equally necessary, if not more so, *viz.*, that the responsible employment in places of trust available in this country should be reserved for the nationals of this country only. We have in the recent past been obliged to use powers of this kind against those who have discriminated against our nationals in their own jurisdiction. This might be difficult to do hereafter under the new Constitution if a provision of this kind remains in the Constitution, and there was no authority for us to make a discrimination of the kind I am conveying. I therefore think that there is nothing improper, that there is nothing out of order in making a suggestion that the places of employment, opportunities of service in the country should be reserved for the nationals of the country. I hope the House will accept it.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I want to say a few words.

Mr. Vice-President: You can do it during the general discussion.

Shri M. Ananthasayanam Ayyangar: Sir, when you called out amendment No. 77 in List No. 2, I did not follow you. It also arises in connection with article 10. With your leave I beg to move:

"That with reference to amendment No. 338 of the List of Amendments . . . . . ."

Shri H. V. Kamath: On a point of order. Sir, is the amendment now under discussion or the article and the amendments?

Shri M. Ananthasayanam Ayyangar: I am moving an amendment.

Mr. Vice-President: The position seems to be that, when I called out his name previously to move his amendment, Mr. Ayyangar's mind was elsewhere and he did not follow what was happening. He wants to move his amendment now. Am I right?

Shri M. Ananthasayanam Ayyangar: Yes, Sir, that is the position.

Mr. Vice-President: You can move it as a special concession. I hope I have the support of the House behind me.

Honourable Members: Certainly.

Shri M. Ananthasayanam Ayyangar: Sir, with your permission, I beg to move—

"That with reference to amendment No. 338 of the List of Amendments :—

(i) in clause (1) of article 10, for the words "in matters of employment", the words "in matters relating to employment or appointment to office" be substituted; and

(ii) in clause (2) of article 10, after the words "ineligible for any" the words "employment or" be inserted."

This is only intended to clarify the position and also to include the word "office" so that it may be more comprehensive. This does not require any further elaborate speech. I request the House to accept this amendment.

Shri Jaspat Roy Kapoor (United Provinces: General): Mr. Vice-President, Sir, I beg to move:

"That in clause (2) of article 10, after the word 'birth' the words 'or residence' be inserted."

Thereafter the clause will read as follows:—

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or residence, or any of them, be ineligible for any office under the State."

Sir, the object of my amendment is that every citizen of the country, wherever he might be living, should have equal opportunity of employment under the State. Every citizen irrespective of his place of residence should be eligible for employment under the State anywhere in the country. Sir, there being only one citizenship for the whole country, it should carry with it the unfettered right and privilege of employment in any part and in every nook and corner of the country. A citizen residing in the province of Bengal, Madras, Bombay or C. P. should be eligible for employment in the U. P. and similarly a resident of the U. P. should have the right and privilege of employment in any other province of the country, provided of course he possesses the other necessary qualifications for the office. Every citizen of the country, Sir, I think, must be made to feel that he is a citizen of the country as a whole and not of any particular province where he resides. He must feel that wheresoever he goes in the country, he shall have the same rights and privileges in the matter of employment as he has in the particular part of the country where he resides. Unfortunately, Sir, for some time past we have been observing that provincialism has been growing in this country. Every now and then we hear the cry, "Bengal for Bengalis", "Madras for Madrasis" and so on and so forth. This cry, Sir, is not in the interests of the unity of the country, or in the interests of the solidarity of the country. We find that some provincial governments have laid it down as a rule that for employment in the province the person concerned should have been living in the province for many years. One of the provinces, Sir, I am told, has laid it as a rule that they will employ only such persons as have resided within the province for fifty-two years. I do not know how far it is correct. Possibly there is some exaggeration in the report that has been conveyed to me, but the fact remains that provincial governments are being pressed by the citizens of the province to lay down such rules in order to prevent residents of other provinces from seeking service under that provincial government. I can easily understand a provincial government laying it down as a rule that only those who possess adequate knowledge of the provincial language shall be eligible for employment in the province. I can also understand, Sir, a rule being laid down that a person who wants employment in the province should have adequate knowledge of local conditions.

Mr. Vice-President: I am hearing other honourable Members more than the Member who is occupying the rostrum.

Shri Jaspat Roy Kapoor: I was submitting, Sir, that I can easily understand provincial governments, in the interests of efficiency of the services, laying it down as a rule that only those who have adequate knowledge of the pro-

yincial language shall have employment in the province. I can also understand their laying down that persons seeking employment in the province must have adequate knowledge of the local conditions. All that is easily understandable in the interests of efficiency of the services, but to lay it down as a rule that one should have resided in the province for fifty-two years to become eligible for employment seems to me, Sir, to be simply absurd. If a man of fifty-two seeks employment, he can serve only for three more years. I submit, Sir, that this is a tendency which must be checked with a strong hand. I, therefore, submit that in the matter of employment there should be absolutely no restriction whatsoever unless it is necessary in the interests of the efficiency of the services. The unity of the country must be preserved at all costs; the solidarity of the country must be preserved at all costs. We must do everything in our power to preserve the unity of the country, and the amendment that I have moved aims at this and is a step in this direction; and I, therefore, commend it for the acceptance of the House.

Mr. Vice-President: There are two amendments to amendment No. 340. The first is Amendment No. 81 in list III.

Shri K. M. Munshi (Bombay: General): I beg to move:

"That in amendment No. 340 of the List of amendments, in clause (2) of article 10, for the words 'or residence' proposed to be inserted, the word 'residence' be substituted."

This is a verbal amendment, because in the next phrase the words "or any of them" are used. This is just to bring the whole language of the clause to run in an appropriate way, I move this amendment.

Mr. Naziruddin Ahmad: Are not verbal amendments prohibited now?

Shri K. M. Munshi: It is for the Chair to rule whether this falls within this category or not.

Mr. Vice-President: I am very thankful to the honourable Member for the suggestion he has made. It will be taken into account. Mr. Munshi, you may go on.

Shri K. M. Munshi: That is all I want to say. It only eliminates the word 'or' which occurs after the word 'residence' in the clause as it stands.

Shri Alladi Krishnaswami Ayyar (Madras: General): The amendment which I have the honour to move runs in these terms:

That with reference to amendment No. 340, after clause (2) of article 10, the following new clause be inserted:—

"(2 a) Nothing in this article shall prevent Parliament from making any law prescribing in regard to a class or classes of employment or appointment to an office under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment."

The object of the amendment is clear from the terms and the wording of it. In the first part of the article, the general rule is laid down that there shall be equal opportunity for all citizens in matters of employment under the State and thereby the universality of Indian citizenship is postulated. In paragraph 2 of article 10, it is expressed in the negative, namely that no citizen shall be ineligible for any office under the State by reason of race, caste, sex, descent, place of birth and so on. The next two clauses are in the nature of exceptions to the fundamental and the general rule that is laid down in the first part of the article. Now what the present amendment provides for is this that in case of appointments under the State for particular reasons, it may be necessary to provide that residence within the State is a necessary qualification for appointment by and within the State. That is the object of this amendment and instead of leaving it to individual states to make any rule they like in regard to residence, it was felt that it would be much better if the Parliament lays down a general rule applicable to all states alike, especially having regard to the fact that in any matter concerning fundamental rights, it must be the parliament

[Shri Alladi Krishnaswami Ayyar]

alone that has the power to legislate and not the different Units in India. Under these circumstances, I propose this amendment for the consideration of the House.

Shri H. V. Kamath: On a point of clarification, Sir, may I know from my honourable friend, Mr. Alladi Krishnaswami Ayyar whether the words here expressed "any State for the time being specified in the First Schedule" applies to all the four parts of the First Schedule"? The first Schedule consists of four parts. Three parts refer to the States and the last part refers to the Andaman and Nicobar Islands; and we have already adopted article 1 which states in sub-clause (2) that "the States shall mean the states for the time being specified in Parts I, II and III of the First Schedule. May I know from him whether "any State for the time being specified in the First Schedule" means all the States and territories comprised in all the four parts of the First Schedule? In that case the language of this amendment will have to be modified. It will have to read "under any state or territory in the first four parts, I, II, III and IV of the First Schedule," and if you want to retain only the word 'State', then it will be 'under any state specified in Parts I, II and III of the First Schedule.'

The Honourable Dr. B. R. Ambedkar: It is quite obvious that we have not specified parts. We have merely said 'First Schedule' and First Schedule includes all the States in the First Schedule.

Shri H. V. Kamath: Article 1 says 'the States included for the time being specified in Parts I, II and III of the First Schedule.' The territories comprised in Part IV is not a State according to our Constitution.

The Honourable Dr. B. R. Ambedkar: There should be no attempt to make any distinction at all.

Shri H. V. Kamath: If my point is unanswerable, I have nothing to say.

Shri Alladi Krishnaswami Ayyar: If you only refer to the First Schedule, you will find that Part I refers to the territories known immediately before the commencement of this Constitution as the Governor's Provinces. Part II deals with the territories known immediately before the commencement of this Constitution as the Chief Commissioners' provinces, of Delhi, Ajmer-Merwara and so on. Part III deals with Indian States. All these three categories are referred to and described as 'States' in Article 1. Part IV of Schedule 1 are Andamans and Nicobar Islands. These are not States but territories.

Shri H. V. Kamath: I do not know how you get over this difficulty; Andaman and Nicobar Islands is not a State.

Shri Alladi Krishnaswami Ayyar: The Andamans would be under the jurisdiction of the Centre and they will be part of the Central jurisdiction. There this principle as to residence within that particular locality does not apply to Andaman and Nicobar Islands. The idea is that so far as Andaman and Nicobar Islands are concerned, the Centre must have a free hand. So far as States in parts I, II and III alone are concerned they must be invested with the authority to provide 'residence' within the State as a necessary qualification.

Shri H. V. Kamath: It will be consistent if you say 'under any State or territory comprised in Parts I, II, III and IV of the First Schedule,' or "any State specified in Parts I, II and III of First Schedule". Otherwise it will not.

Mr. Vice-President: I suggest that the House will kindly let me go on with the other amendments and in the meantime the honourable Member may go and try to persuade Mr. Alladi Krishna[illegible]

The amended article as suggested by me would read:—

"Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with managing the affairs of any religious institution or any member of the Governing Body thereof shall be a person professing a particular religion."

The other words would be deleted.

As I understand the purpose of this article, I think what is wanted is that any exclusive religious institution, specifically concerned with a particular sect or denomination, should be conducted by people professing that religion, sect or faith, and that none not so professing should be allowed to be associated with the management of it. If you use the very much broader words, that is to say "in connection with"—"any person holding any office in connection with"—I venture to think that those words may also include any *honorary* office or a mere place of honour in recognition of some donation, or some special gifts or some other service, which it would not be right and proper should go wholly unrecognised for mere reasons of difference in religious belief, especially if such institutions are conducting or having other activities besides merely religious or sectarian.

As illustration, may I give this. I can conceive of, let us say, educational institutions like universities or hospitals or other similar foundations, which may be regarded as devoted to or connected with a particular religion, in the governance of which a provision like this, without the amendment I am suggesting, may work needless mischief. In those bodies the mere holding of an honorary fellowship, or senatorship, or some kind of an honorary lecturership should not be excluded. I am sure it was not the intention of the draftsmen to exclude such merely honorary connection. But I feel that their wording, as it stands, is liable, at least in the laymen's judgment, to be misconstrued; and at times offer opportunity to extra-clever lawyers to make new capital out of such provision.

So, I for one would not like to leave any room for the exercise of such ingenuity at the expense of the Community, or of the interests or the ideals which we are accepting here. In making provision of this kind, it seems to me, if I may make a general observation, that the draftsmen seem to be torn between two rival ideals: one suggesting the Constitution for a wholly secular State, in which religion has no official recognition, and therefore trying to make, so far as the civic life of the community is concerned, no provision or distinction in favour or in connection with a religion sect or a denomination.

On the other hand, there seems to me to be a pull—somewhat sub-conscious pull, if I may say so—in favour of particular religions or denominations, whose institutions, whose endowments, whose foundations, are sought to be protected and kept exclusive by making exceptions of this kind. After all, this clause (4) is an exception to the main principle of the article; and, being an exception, it seems to secure immunity or exclusiveness for the management of the institutions of particular denominations, which the draftsmen somehow sub-consciously have sought to provide. That is to say, without denying the basic principle of a secular State, they have introduced by the back door so to say new amendment or exceptions, which seem in my eyes to take away the spirit of the whole provision as contained in this article.

I think, therefore, that if it was made clear by the addition of the words that I have suggested, namely, that no one not professing a particular religion need be associated with *managing* the affairs of that institution it would suffice. It would serve the purpose, if such purpose is to be served, of the original Foundation; and at the same time it would give you all the safety, all the unconcern, if I may put it that way, of a State which favours no particular religion.

[Prof. K. T. Shah].

There is nothing objectionable in my amendment that I can see, though I shall listen with interest to any opposition or objection which the draftsmen or their champions may have. Until they say so, and convince me to the contrary perhaps it would be just as well to commend this amendment with these words to the House.

(Amendment No. 364 was not moved.)

Mr. Vice-President: No. 365 is verbal and is disallowed.

(Amendments Nos. 367 and 368 were not moved.)

Mr. Vice-President: Regarding No. 82 on list II, there was some objection raised by Mr. Kamath.

The Honourable Dr. B. R. Ambedkar: He is satisfied with the explanation given by Mr. Munshi.

Shri H. V. Kamath: No, Sir. It has not removed my difficulty. It has not removed the doubts in my mind. Let them explain again, if they can. I do press my point.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar): The point raised by Mr. Kamath is really ticklish and it requires some consideration. There seems to be no doubt about it. Now, Sir, the amendment reads thus:

"Nothing in this article shall prevent Parliament from making any law prescribing in regard to a class or classes of employment or appointment to an office *under the State* for the time being specified in the First Schedule or any local or other authority within its territory any requirement as to the *residence within that State* prior to such employment or appointment."

Now, the word "State" occurs in two places in the Draft Constitution. One is in Article 1 and the other is in Article 7. The meaning of the word state in Article 1 is comprehensive and mostly relates to the territorial side of it, and in Article 7 it relates to the authoritative side of it, the Government part of it. I shall read the latter: Article 7 says:

"Unless the context otherwise requires, the State includes the Government and the Parliament of India and the Government and the Legislature of each of the States and of local or other authorities within the territory of India or under the control of the Government of India."

So article 7 which defines the word "State" does not define the territory but it defines the authority of the State. Article 1 defines the territory of the State. The amendment speaks of both. So, when we say employment or appointment to an office under any State, there we say the authority of the State; so there is nothing wrong because article 7 would mean all the territories of the States in Schedule I. As soon as we say that "In this part, unless the context otherwise requires, the State includes all....." so far as this article 7 is concerned, the whole of Schedule I is covered and there is no doubt about it. Then, Sir, article 10 refers to appointment to an office under the State,—there is nothing wrong because here "under the State" means as defined in article 7, and because the definition of article 7 covers the whole of the State including the territories in the First Schedule. That is all right. But when we come to the other part of it, as to residence within that State, there the rub arises. The residence cannot be in the authority; the residence must be in the territory and therefore we cannot invoke Article 7; we must necessarily go to Article 1 and when we go to Article 1, therein part (4) of Schedule I becomes excluded. This is my point.

Mr. Vice-President: Before we start the general discussion, I would like to place a particular matter before the honourable Members. The clause which has so long been under discussion affects particularly certain sections of our

population—sections which have in the past been treated very cruelly—and although we are today prepared to make reparation for the evil deeds of our ancestors, still the old story continues, at least here and there, and capital is made out of it outside India. Every time we seek to place discussions in the international sphere on a high plane, it is at once thrown in our teeth that we have been treating certain sections of our brethren in a very unjustifiable way. I would therefore very much appreciate the permission of the House so that I might give full freedom of discussion on this particular matter to our brethren of the backward classes. Do I have that permission?

Honourable Members: Certainly.

Mr. Vice-President: I will first call upon Mr. Gurung.

Shri H. V. Kamath: Before you proceed to the discussion of the article, won't you finalise the amendment of Mr. Alladi Krishnaswami Iyer? The difficulty raised by me has not yet been answered.

Mr. Vice-President: That will be taken up later on.

Mr. Naziruddin Ahmad: I have a preliminary matter. This contravenes some amendment which has already been accepted. There is in line 3 in amendment No. 82 the expression "any State." We have accepted the expression "the State."

Mr. Vice-President: I cannot permit you to speak now. Mr. Gurung may speak.

Shri Ari Bahadur Gurung (West Bengal: General) Mr. Vice-President, I thank you very much for the opportunity given me to speak on this occasion. I am particularly happy to note the provision in clause 3 of this article which says.

'Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State.'

Sir, may I take it that the word 'backward' includes three categories of people, namely Scheduled Castes, and Tribals and one particular class which is not included so far, under the term 'backward' although it is educationally and economically backward? If I may say so, Sir, 90 per cent. if not more of the Indian people are educationally and economically backward; the meaning of the word 'backward' seems to be vague to me. I feel I shall be failing in my duty to a particular section of the Indian people, *viz.*, the Gurkhas, if I do not voice their feeling at this stage.

The Gurkhas, I must bring to the notice of the House, are three millions, if not more, domiciled in India. They are educationally and economically backward. I feel that the Gurkhas who are domiciled in India should have the same privilege as other backward communities in India. Sir, it is a known fact that the Gurkhas have played their part in the preservation of the independence of India and are now actually fighting in Kashmir after fighting in Hyderabad. They have had their share of the work in the preservation of India's independence. I assure the House that the Gurkhas who are now domiciled in India owe their full allegiance to the Indian Government. There had been a deep-rooted suspicion in the minds of many that the Gurkhas owe allegiance to the Government of Nepal. Today, on the floor of the House, I assure you that the Gurkhas who are domiciled in India owe allegiance to the Government of India and not to the Government of Nepal. These Gurkhas will not hesitate to shed their last drop of blood to preserve the independence that we have got.

There has been a very good gesture since the 15th August 1947 regarding the Gurkhas. When the Britishers were ruling in India, the Gurkhas were given only Viceroy's Commissions in the Army; but since 1948, many Gurkhas have been given emergency commissions as officers and I understand some of them

[Shri Ari Bahadur Gurung]

have risen to the rank of Colonels too. This grant or recognition has been a very good gesture.

Now this clause in article 10 makes a provision in favour of the backward classes of citizens who in the opinion of the State are not sufficiently represented in the services of the State. Today, I feel that the Gurkhas who had their opportunity to serve in the army and are educated, with this provision, may be taken to the civil side of the administration. I hope that the Gurkhas who have shown their bravery and valour in the army would show equal intelligence and integrity in the civil departments.

Thank you very much, Sir.

Shri R. M. Nalavade (Bombay: General): Mr. Vice-President, Sir, I am very glad to express the support of the depressed classes to article 10 which is now under discussion. In this article, particularly in clause (3) there is provision made for reservation in the services for the backward classes. But the words 'backward classes' are so vague that they could be interpreted in such a way as to include so many classes which are even educationally advanced. They are found mentioned in the list of backward classes. If the words 'Scheduled Castes' might have been used it would have been easier for the depressed classes to get adequate representation in the services. Our experience in the provinces, though there are provisions for reservation in the services, is bitter. Even though the depressed classes are educated and qualified, they are not given chances of employment under the Provincial Governments. Now that we have provided for this in the Constitution itself, there is no fear for the scheduled castes. According to this clause we can be adequately represented in the provincial as well as in the Central services. I therefore support this clause on behalf of the depressed classes.

Dr. Dharam Prakash (United Provinces: General): *[Mr. Vice-President, it is an undoubted fact that "backward" class has not been defined so far and there is no possibility of its being defined in the near future. In fact there is no community which does not have a section of people which is backward, whether economically or educationally or socially. Thus there are backward people in every community. Personally I believe that if there is to be any reservation for backward classes in the services it is very necessary to see as to what is the present position and what is to be the future of a particular class which has been backward for centuries, whether religiously or economically or socially. This view needs careful consideration.

The first objectionable feature of this clause is that it can be instrumental in bringing about a great crisis even in the present circumstances. Every honourable Member knows that our national government has inherited an administrative machinery which always had a very narrow communal, provincial or religious outlook. Even now it is an undeniable fact that whenever the question of reservation in services arises, the people of any province holding a majority of posts or the person holding any office are led by provincial or individual interests in making appointments. If the person concerned belongs to the province of the officer he is favoured from the provincial point of view. If he belongs to his community, he is favoured from the communal point of view and if he belongs to his caste, sub-caste or section, he is favoured from that point of view. The officer does not take into consideration the merit of the candidate but only sees whether he can serve his interest. Therefore he encourages such people alone to join the services. It cannot be expected of this machinery of the old pattern, which is moving at its present speed with great effort, that it will act impartially in making appointments to the services. This is a great danger and to remove it, I think, it is necessary to clarify impartially

*[ ] Translation of Hindustani speech.

as to who are the backward classes. This may remove the difficulty. The atmosphere in the country today is such as compels us to demand reservation not in the services but also in the Legislatures. Otherwise I am of the opinion that in a country, which has become free and the constitution of which is being framed with full freedom, there is no necessity for reservation. But the great difficulty which forces us to make a demand for reservation is that there is no such generosity and impartiality in our society as a society needs for its welfare nor is there any possibility of its being there in the near future. Therefore, as it has been suggested by the amendment, I submit that the words 'backward class' should be substituted by 'depressed class' or 'scheduled class' because the latter have a definite meaning. Among the scheduled castes have been included a number of those classes which are accepted by all to be backward. Therefore I support this amendment in the form that the words 'backward class' should be substituted by the words 'scheduled caste.' I think that reservation in services too is necessary for them for some time. Otherwise I do not even like to have any reservation in the legislatures. I personally hold the view that in this free country it is not proper to make reservation for Hindus, Muslims, Christians and Sikhs on the ground that they are minorities. But in so far as that section of Hindus is concerned who are called Harijans, and they are really backward,—it appears to be appropriate that there should be reservation for some time. That too should be for some time only. When they reach the same level of culture as other sections of the population have, I would be the first person to oppose any reservation whatsoever for them. So long as they do not attain that position, I favour reservation. Therefore, I submit that with the addition of these words reservation in services will prove to be useful instead of being harmful.]

Shri Chandrika Ram (Bihar: General): *[Mr. President, I rise to express my support for article 10. Several amendments have been moved for inserting the words "Scheduled Castes" after the words "Backward classes" in this article. I would like this to be done. Members are perhaps aware of the fact that the question of reservation for Depressed Classes and Scheduled Castes was discussed by the Advisory Committee but it was lost by a single vote. Otherwise there would have been legally binding provisions for reservation in services for the Harijans. But as it is, I find that people are wondering why the expression "Backward Classes" has been put in this article and why is it that 'Backward Class' has not been properly defined. The members of the House who have had occasion to go through the Census Reports specially of the years 1921 and 1931, would have found that the expression 'Backward Class' has, in a way, been defined therein. So far as I think, and this opinion is borne out by these Reports, our society is divided into three sections—the highest consisting of that section of our society which is known as 'Caste Hindus' and the lowest of the section known as Scheduled Castes or Harijans, while the third occupying a middle position between these two and consisting of a large portion of our people is what may be termed as the Backward Class. I am sorry that this backward class for whose cause Honourable Pandit Hirday Nath Kunzru has pleaded, has not been given reservation in Legislatures, that is neither in the assemblies nor in the councils. I may cite Bihar as a case in point. According to the Census Report, the backward class constitutes a major section of the population of the province. But you will find that with the only exception of Ahir community no other community has been given representation in the Council or Assembly of the province. Their population in the province is about five millions. There are altogether 152 seats in the Assembly and 30 seats in the Council; but in both the Houses the Backward Class has got only two seats. No doubt they are not treated as untouchables. Moreover from the educational and economic point of view they are in a much better condition than the other communities. If a community, however, is to progress and occupy a high position in

*[ ] Translation of Hindustani speech.

[Shri Chandrika Ram]

society it is essential that it must possess political rights. If a community, howsoever large it may be within a society and whatever pre-eminence it may have reached in the matter of its culture, does not possess political rights and has also no political representation in the Council and the Assembly, I am afraid, I cannot see how it can have the same status as the other communities in the eyes of the State. I, therefore, think that just as we have provided for reservations for the Harijans in Services, in Assemblies and in Councils, it would be proper on our part to make similar provision for backward classes also for whom Pandit Hirday Nath Kunzru has argued so feelingly. We have provided so many privileges to Harijans on the ground that they are backward and I fail to understand why the same argument should not be applied for providing reservations for the backward classes. I think that this is a view requiring serious consideration. We are framing a constitution for our country by which we intend, and this has been specifically stated in the preamble, to secure to all citizens 'Justice, social, economic and political.' But I think that we are actually denying political rights to a large section of our countrymen who constitute in my opinion, a majority of the population. We profess to be providing equal opportunity to all but in fact we are denying this to the backward classes. Therefore, if we really mean to secure equal opportunity to all we should, in article 10, not only provide for reservation of appointments or posts in favour of backward class of citizens but should also provide for reservation of seats in Legislatures for them. I would like to answer the objection of many members against the retention of the words 'backward class' in this article.

Particularly my socialist friends Seth Damodar Swarup and Pandit Lokanath Misra have moved amendments seeking deletion of the word 'backward class.' The first observation I would like to make in this connection is that I do not understand why Sethji who is a member of the Socialist Party, which, as is well known, desires to secure representation for every section of the population, should be raising an objection against the provision in this clause which is for the benefit of the 'Backward Class.' To those who think that no backward class exists in the country, I would only say that they are blind to the facts of the history of our country, to the progressive society of today and to the conditions obtaining at present. I therefore commend wholeheartedly the labours of the Drafting Committee in this respect. With these words, Sir, I support the amendment as it is.]

Shri P. Kakkan (Madras: General): Mr. Vice-President, Sir, I am very glad to support article 10. The poor Harijan candidates hitherto did not get proper appointments in Government services. The higher officers selected only their own people, but not the Harijans. Sir, even in the matter of promotions, we did not get justice. The Government can expect necessary qualifications or personality from the Harijans, but not merit. If you take merit alone into account, the Harijans cannot come forward. I say in this House that the Government must take special steps for the reservation of appointments for the Harijans for some years. I expect that the Government will take the necessary steps to give more appointments in Police and Military services also. For example, in Kashmir the poor Harijans are fighting with great vigour. I say in this House that the Harijans must be given more jobs in this Government and be encouraged by the Government. With these few words, I finish my speech, Sir.

Shri V. I. Muniswamy Pillay: Mr. Vice-President, Sir, in the first two clauses of article 10, it has been made clear that all citizens will have a general right for the services, but when we come to clause (3), by putting the word 'backward' which has already been pointed out by one of the honourable members, it has not been defined properly. So this throws me in confusion, whether the communities that were left out early in the administration for their due share have

been provided for. Sir, in the great upheaval of making a Constitution for this country, I feel that the communities that have not enjoyed the loaves and fishes of the services should not be left out. It is for this purpose, I gave notice of an amendment and a further amendment signed by more than fifty members has been presented to this House, but for reasons well-known to you, Sir, I could not move that amendment. But I wish to make it clear that unless there is an assurance that these communities—I specially mean the Scheduled castes—are given a chance, unless there is an assurance that these communities will at all times be taken into account and given enough and more chances in appointments, their uplift will still stand over. The other day, Sir, our Honourable Deputy Premier, Sardar Patel, has clearly said that not only justice must be done to the Harijans, but their case must be treated with generosity. It is in that view and spirit I request that a clear indication should be given by this House that the interests of the Scheduled Castes will be looked after. Sir, some honourable Members feel that reservation is not necessary. I think this is unwholesome thinking, because so long as the communal canker remains in the body politic, I feel there will be communities coming up for reservation; but the case of the Scheduled Caste is not pleaded on a matter of communalism, because they have been left in the lurch and due to their lack of social, economic and educational advancement for years and decades it is necessary, and I also feel that their case must be presented in this House vehemently, so that we may get justice at all times. At the same time I may tell this House that it is not the object of any of the leaders of the Harijan community to perpetuate the communal bogey in this land for ever, but so long as they remain so backward in getting admission into the services, it is highly necessary that they must be given some protection. Sir, in the past, the Government of India had made provision experiencing their inadequacy in the services; and even in my own province the Government of Madras have issued a communal G. O. and thereby they have given chances for the Harijans. Apart from that all those people who have been recruited from the Scheduled Castes have proved worthy of the choice. If I may say so, Sir, even in the Military, we know that in Kashmir they have played their part most efficiently and the very existence of the Chairman of the Drafting Committee here shows the ability that the Scheduled Castes posses.

Shri T. Channiah (Mysore): Mr. Vice-President, Sir, the retention of the word 'backward' in clause (3) of article 10 has created some doubt among honourable members from the Madras province. It is a fact, of course, Sir, that the word 'backward' has not been specifically defined in the Draft Constitution. Honourable Members coming from Northern India have been puzzled to note that honourable members coming from the south are very particular about this word 'backward.' In Northern India, for instance, the honourable Members coming from Northern India are aware that there is a clear distinction between Hindus and Muslims; that much they understand very clearly. They also know that among the Hindus there are classes of people who are agricultural classes, and also people who are engaged in artisan works. They also belong to the backward class. In South India, Sir, the term 'backward classes' is very distinct. The Backward classes in South India, as I am aware, are either socially backward or educationally backward. The only classes who do not fit in in this context namely clause (3) of article 10 are those who are economically forward. They feel that the word backward, if retained, will come in the way of their interest, namely, entertainment of these classes in the services. Therefore, Sir, the backward classes of people as understood in South India, are those classes of people who are educationally backward, it is those classes that require adequate representation in the services. There are other classes of people who are socially backward; they also require adequate representation in the services The economically forward class of people are really disinterested in the word 'backward' appearing in clause (3) of article 10.

[Shri T. Channiah]

To give a clear picture of this, Sir, I would like to state what obtains in M[redacted]. There are two classes of vacancies, A and B classes. For the A Class vacancies, both the Brahmins and the Non-Brahmins are competent to apply, whereas for the B class vacancies, only the backward classes are entitled to compete. Sir, these backward communities suffer from two disabilities, namely, social disabilities and educational disabilities. It is from these two points of view, that the State Government has specifically provided the appointments in the B class. Therefore, Sir, it is but right that the word "backward" appearing in clause (3) of article 10 should be retained. As the Honourable Dr. Ambedkar has rightly said, the retention of the word 'backward' will be very appropriate also for this reason, namely, that clauses (1) and (2) of article 10 would be null and void if this word 'backward' is not retained in clause (3) of article 10.

Mr. Vice President: Sorry, there are other speakers who want to speak.

Shri T. Channiah: I am really sorry that the honourable Pandit Kunzru should have felt that the backward class should be given this opportunity only for a period of ten years. Sir, I want this reservation for 150 years which has been the period during which opportunities have been denied to them.

Mr. Vice-President: Mr. Channiah, will you please go to your seat?

Shri Santanu Kumar Dass (Orissa: General): *[Mr. Vice-President, it is not my desire to say anything in connection with Backward classes which are being discussed here. The evil effects of foreign rule in our country prevent us from immediately deleting all provisions relating to Reservations from our Constitution. So long as these conditions continue in our country we will continue to demand reservations in the services for the Harijans and the scheduled castes, for these are covered by the term 'backward class'. We will go on scrutinising the number of Harijans, Muslims and Christians in the services. Nowadays a minority fears that without reservation it would not be able to gain seats in Elections or employment in services. You know that there are many vacancies in the Railway and Postal Departments. These posts are advertised. We receive interview letters and our candidates come from distant places for interview, but their cases are not at all considered and they are totally ignored, whereas those who have been working as apprentices are selected as they have a strong backing from their departments. What do we gain by these advertisements? When there is a chance we are ignored. Then why do you advertise at all? Is it only to please Panditji or Sardarji?]

Mr. Vice-President: You are wandering from the point.

Shri Santanu Kumar Dass: *[This also puts the gazetted officers of the scheduled castes and minority community into difficulty. Seth Damodar Swarup has just said that there is no need for reservations as Public Service Commission would secure impartiality. But in this connection I would like to point out that though there is a Public Service Commission, and candidates appear at its examination and many of those who qualify appear in the lists, yet when there is a chance of filling posts those who have not even appeared at the examination are taken in. How does it happen? It happens because such people have a strong backing which enables them to get selected. I am afraid the continuation of Public Service Commissions would be of no use for us.

At present there is reservation in the elections and thereby we get a chance to discuss our problems here. But if there was no such reservation it would not be possible for us to come here as we would not be able to win in the

*[ ] Translation of Hindustani speech.

general elections. I therefore, submit that there should be reservation in services and elections.

There is one thing more: It has been said that reservation should be kept for ten years. Why only for ten years? If we get equal rights within two years all would be on the same level after that period and there would be no need for reservations. With these words I support the article.]

Shri Jaspat Roy Kapoor: Sir, may I submit that many of us do not appreciate the Marshal going to the speaker and asking him to resume his seat?

Mr. Vice-President: I am sorry for what the Marshal did; but it was not at my request. He is over-zealous.

Shri H. J. Khandekar: (C. P. & Berar: General): Sir, may I request you one thing with reference to the time limit? The speakers here are mostly Harijan speakers and they require some time to explain the situation. I would therefore request you to increase the time limit so that they can explain and support this article very well.

Mr. Vice-President: Yes.

Shri H. J. Khandekar: Mr. Vice President, Sir, I have come here to support article 10 which is being discussed in the House. Before supporting it I congratulate the friend who in the Drafting Committee has inserted this word 'backward' in article 10 clause (3). If this word 'backward' had not been here, the purpose of the scheduled caste would not have been served as it should be. The condition of the scheduled castes has been explained by many friends who made their speeches in the House. The condition is so deplorable that though the candidates of the scheduled castes apply for certain Government posts, they are not selected for the posts because the people who select the candidates do not belong to that community or that section. I can give so many instances about this because I have got the experience from all provinces of the country that the scheduled caste people though they are well qualified do not get opportunity and fair treatment in the services. It would have been better if the word 'scheduled caste' as has been proposed by an amendment by my friend Mr. Muniswamy Pillay would have been inserted in this article. Because the term 'backward' is so vague that there is no definition of this word anywhere. I do not agree with my friend Mr. Chandrika Ram saying that the definition of the word 'backward' is given in the Census report. That is the definition of the word 'scheduled caste' and a list of the castes included in the scheduled caste. But I think the friend who has inserted this word in this article is aiming at the community known as the scheduled caste and when this Constitution is passed and when the article comes into operation, I hope that the Executive who will operate this clause or this Constitution will also aim at the community known as scheduled castes. Our revered leader Thakkar Bapa is in the House. He has been working for this community for about sixteen years as the General Secretary of the Harijan Sewak Sangh. He knows the difficulties of this community socially, economically, educationally, religiously and even politically. If I may say here leaving aside all these aspects, and if we consider the aspect politically, this community is not represented anywhere if no reservation of seats are given to that community.

Mr. Vice-President: You had better confine yourself to the article under discussion. How does politics enter into the picture at all?

Shri H. J. Khandekar: Therefore, if I leave aside the political aspects of the community and come to the social, educational, economical and religious aspects, the condition of the scheduled caste in this respect also is more deplorable than that of any man living in this country. I may say, that if a candidate of the scheduled caste applies for a particular post in the Government of

* [ ] Translation of Hindustani speech.

[Shri H. J. Khandekar]

India or in the Provincial Governments he is ordinarily ignored. There are commissions for recruiting these candidates. There is a Federal Public Service Commission, there are provincial Commissions; and while recruiting—you know, Sir, we people are educationally backward and we cannot come in competition with the other communities—if the qualifications for the Harijan candidates are not relaxed, our candidates will not be able to compete with the candidates of the Brahmin community or the so-called Savarna Hindus. Then if our candidates go to the F.P.S.C. or the Provincial Commissions they will not be successful in the selections as these commissions are not represented by us. I therefore think that while bringing this clause into operation, the F.P.S.C. or the Provincial Commissions should be instructed to relax the qualifications in connection with the Harijan candidates or the Scheduled Caste candidates and there should also be Harijan representatives on these commissions. Moreover, Sir, I know and the House and you too, Sir, know that the Government of India—I mean the present Government of India—has issued a circular about the services for the Scheduled caste. They have said that in higher services 12½ per cent. of the seats are reserved for the scheduled caste and in the lower services 16⅔ per cent. are reserved for them.

Sir, if you just see how the recruiting of scheduled castes candidates is going on in practice, you will find that not even 1 per cent. of these candidates has been recruited in the higher services and in the lower services of the Government of India. Look at the Provincial Governments that have been run by our popular ministries. Even in those provinces, the scheduled castes have no adequate representation in the services. I, therefore, would have been very glad if after or before the word "backward", the word "scheduled castes" had been inserted, because this term 'backward' is a vague one and while making the selections, communalism will arise and the commissions, I do not blame them, will be helpless. As was said here by certain friends of mine, communalism is going on, and provincialism is going on and other things are also going on and I am afraid if these things are continued, even if this clause is brought into operation, the scheduled castes will never get a chance, as the word 'backward' would be interpreted in such a way that we people would get no chance in the services because the people of other castes will also claim to be backward and get the chances on reserved posts. Therefore, Sir, before resuming my seat, I would request you to see that the machinery which will operate this clause should be so pure, that no discrimination of any sort should be made between scheduled castes and other people who come under the category of backward classes. With these words, Sir, I take my seat.

Mr. Mohamed Ismail Sahib (Madras: Muslim): Mr. Vice-President, Sir, this word 'backward' I cannot understand in the context in which it is put here in clause (3) of article 10. If one reads the clause without this word, then one can quite clearly and easily understand its meaning. But when the word 'backward' is inserted, it obscures the meaning a great deal. The word 'backward' has not been defined at all anywhere in this Constitution. But I may tell you it has been defined in certain places. In Madras it has got a definite and technical meaning. There are a number of castes and sub-castes called backward communities. The Government of Madras have counted and scheduled more than 150 of these classes in that province and in that province when you utter the word 'backward', it is one of those 150 and odd communities that is meant, and not any community that is generally backward. And I may also say that those 150 and odd communities constitute almost the majority of the population of that Province, and every one of these communities comes from the Hindus—the majority community. In that list the scheduled castes are not included, and if you include the scheduled castes also in the class of those backward communities, then all of them put together, will form decidedly the majority of the whole population of that province. I want to know whether by inserting the

word 'backward' here you mean the same backward classes as the Madras Government means, I want to know the meaning of the word. I submit that it should not in any way be taken to mean that the backward classes as those of the minority communities such as Muslims, Christians and the scheduled caste people are excluded from the purview of this clause. As a matter of fact, there are backward people amongst the non-majority people as well. The Christians are backward. As a matter of fact they are not adequately represented in the services of the provinces. So also the Muslims, and also the Scheduled Castes. If any provision is made, it has to be made for such really backward people. It may be pointed out that such a provision is made in article 296 under the minorities rights. But there the article does not speak of the reservation for those people in the services as this clause (3) does. Therefore, it is here, and that in the fundamental rights that such a provision ought to be made for such minorities as the Muslims, Christians and the Scheduled Castes.

Then Sir, I am opposed to the amendment moved by Pandit Kunzru. He says that the Government shall have the right or option of providing for reservation only for a period of ten years. Sir, the measure or yard-stick in any such matter should not be the period of time. The backwardness of the people is the result of conditions which have been persisting and in existence for several centuries and ages, and these will not die off easily. So the measure really should be the steps that are being taken to liquidate that backward condition, and it should be the forwardness of the people which has resulted as a consequence of those steps. Therefore, when these people advance and have come forward as much as any other community in the land, then these very reservations would automatically disappear. I feel that no period need be stipulated at all for this purpose. That period might be less than ten years, or it may be more than ten years, according as the backwardness persists or disappears. The measure, as I said, should be the effect and result of the steps that are being taken for removing and eliminating those conditions which go to make the backwardness. I would now request the mover of the motion to at least remove the word 'backward' and make it clear to the House that here, when the clause speaks of reservation, it means also minority communities, who stand in need of such reservations.

Sir, there is only one more point which I have to touch upon. When we speak of reservations and rights and privileges, the bogey of communalism is being raised. Sir, communalism does not come in because people want their rights. When people find that they are not adequately represented, they rightly feel that they must have due representation and then such a demand comes up. It comes because of their non-representation in the services, and because of their discontent. When such discontent is removed, the unity of hearts comes in. It is the unity of hearts and not any attempt at a physical unity that will do good to the country and to the people. The differences will be there, but there must be harmony and that is what we all really want, and that harmony can be brought about only by creating contentment amongst the people. And reservation in services is one of the measures we can adopt to bring about contentment among the people. You can then say to the people, "Look here, you have your proper share in the services and you have nothing to complain." When people themselves find that they are given as good an opportunity as others, harmony will be there and the so-called communalism will not come in at all. There are countries which have followed the procedure which I am advocating and quite effectively, they have eliminated communalism. Therefore, I say that one of the ways of removing disharmony and producing harmony, is to make provision for the people's representation in the services and to make them feel that they have got a real share and an effective share in the governance of the country.

Sardar Hukam Singh (East Punjab : Sikh) : Mr. Vice-President, Sir, the point that I want to press before this House has already been touched upon

[Sardar Hukam Singh]

by one or two Members. The Honourable Pandit Kunzru has said that he wants to enquire what relation there is between article 10 and article 296. Certainly if we take article 10, clause (1), it is laid down there that "there shall be equality of opportunity for all citizens in matters of employment under the State". That would mean that when posts are to be filled, that would be done by open competition and the topmost men would be taken in. That is quite all right; that should be the procedure.

But when we look at articles 296 and 297, those two articles lay down that claims of all minorities shall be taken into consideration :—

"Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments....."

To me it seems that there is some conflict between these two articles. If we are to fill up these posts by open competition and on merit, certainly we cannot give recognition to the claims of all minorities. Then the best men would be taken in and if some members of the minorities do happen to succeed, that would not be on the consideration of their claims as minorities but that would be under article 10 as equal citizens of the State. If they get those posts in open competition, it is all right; but if they are not adequately represented by that method, then what article 296 implies is, that special consideration shall be shown to them to see that their representation is made up.

Sir, there can be only one of these two things—either there can be clear equal opportunity or special consideration. Article 10 says there shall be equality of opportunity, then it emphasises the fact by a negative clause that no citizen shall be discriminated on account of religion or race. It is quite good, but when no indication is given whether this would override article 296 or article 296 is independent of it, we are certainly left in the lurch. What would be the fate of the minorities ?

In clause (3) this new phrase "backward class" of citizens has been introduced. We had heard of "depressed classes", "scheduled castes", but this "backward class of citizens", so far as our part of the country is concerned, we have never seen used in any statute. Just now we have been told that "backward classes" have been defined in the Province of Madras; that may be, but that is not within my knowledge. Whereas this new term has made apprehensive the members of the scheduled castes and they have pressed here that it should be made clear that it only applies to them, if it is for their benefit, at the same time it has made the minorities apprehensive whether they are being included, as Pandit Kunzru said, whether "backward classes" would include those minorities as well, whether if they are not adequately represented any concession would be shown to them; and if they are not to be included in this phrase then what would be their fate under article 296. Unless we reconcile these two articles—296 and 10—the safeguards that are being provided in article 296 become illusory and there is apprehension in our minds as to whether that article would be to our benefit at all.

Shri K. M. Munshi : Mr. Vice-President, Sir, the criticism that has been placed before the House so far has revolved round two points. The first point is the scope of amendment No. 82 moved by my honourable friend Shri Alladi Krishnaswami Ayyar; the second is about the word "backward". I propose to deal with the first question particularly in view of what was said by my honourable friend Mr. Gupta and the comments made by my honourable friend Mr. Kamath.

I want the House to realise the scope of this article. In article 10, clause (2), the House has added the word "residence" to the various restrictions that are mentioned there.

Shri T. T. Krishnamachari (Madras: General): It has not been added, it was merely suggested.

Shri K. M. Munshi : It has been moved that it should be added; I stand corrected. We have moved an amendment to this effect implying thereby that we are going to support it and I hope we are going to get the support of the House. The amendment seeks to insert the word "residence" in clause (2); that would mean that no State, not even a local authority like a municipality or a local board, can ever make a rule that the incumbent of an office or an employee shall be a resident of that particular place. This would lead to great inconvenience. For instance, there is an amendment to insert the words "office" and "employment" separately; that would include offices which do not carry a salary. Then, take for instance the chairman of a local board. It may become necessary for a Provincial Legislature to lay down a residential qualification. The Provincial Legislature, however will not have the power to do so unless the House accepts the amendment which has been moved by my honourable friend Shri Alladi. All that amendment No. 82 seeks to do is this : if the clause with regard to residence has to be qualified and a residential qualification has to be imposed, it can only be done by the Parliament, that is by the Central Legislature. The reason of this change is that there should be uniformity with regard to this qualification throughout the whole country and that this provision should not be abused by some Legislature by imposing an impossible residential qualification.

The second difficulty which evidently has been present before the minds of some of the Members of the House is with regard to the word "State". I would like to draw the attention of the House to the different meanings of the word "state" used in the Constitution. The amendment says, "Any State for the time being specified in Schedule I". So we have to find the meaning of the word "State". I may now refer to article 1 which says :—

"India shall be a Union of States.

The States shall mean the States for the time being specified in Parts I, II and III of the First Schedule".

Now, if you go to the First Schedule, the Schedule is headed "State and Territories". So far as the First Schedule is concerned, Parts I, II and III refer to the States organised into a separate autonomous Government; while the territories are described in Part IV—Andaman and Nicobar Islands. Therefore, the words "Any State for the time being specified in the First Schedule" would cover only the States mentioned in Parts I, II and III but would not include the Andaman and Nicobar Islands.

Some difficulty has been felt by one or two members with regard to the definition of the word "States".

Shri H. V. Kamath : May I draw my learned friend Mr. Munshi's attention to the language used in the First Schedule ? Part I refers to "territories" as well—"the territories known immediately before the commencement of this Constitution as the Governors' Provinces". The word "territory" is used there and not merely in connection with Andaman and Nicobar Islands. In Parts I, II, and IV the word employed is "territory".

Shri K. M. Munshi : If the Honourable Member is good enough to follow the submissions which I am making, I am sure he will be convinced, unless he is determined not to be convinced, in which case it it a different matter.

Shri H. V. Kamath : The boot, Sir, is on the other leg.

Shri K. M. Munshi: What I am saying is, if you look at the words of article 1, it says: "The States shall mean the States, &c.". These do not include the Central Government of the Union. It only means the autonomous States

[Shri K. M. Munshi]

which are mentioned in Parts I, II and III. As regards Part IV you will find in clause 3, sub-clause (2)—"the territories for the time being specified in Part IV of the First Schedule. . . . ." Therefore Nicobar Islands are not a State within the meaning of article 1. They are a territory. These territories are not governed by any legislature of their own nor are they a state with any autonomous powers. They are directly controlled by the Centre and the Centre cannot make a distinction with regard to its own services between a resident of one province and another. It must treat every citizen equally. The scheme of this amendment therefore, if it is seen in this light, is that with regard to the States in Parts I, II and III and in respect of any office under such States, a residential qualification can be imposed by the legislature.

The other difficulty was in regard to article 7. The article uses the words "the State". They are almost made into a term of art and apply only to the words "the State" used in Part III, that is for the purpose of Fundamental Rights. It has no application to either the Schedule or to the States falling within article 1. Therefore, when the amendment under discussion says "any State" it cannot mean 'the State' as defined in article 7. I submit this amendment makes it perfectly clear that it is for the purpose of services under the States mentioned in Part I, II and III that the Central Legislature can enact a legislation, not with regard to any part of the territory which is directly controlled by the Central Government. It would be quite wrong in principle, I submit, that the Central Government should make distinctions between the residents of one province and another. Therefore, the amendment as it stands, I submit, is perfectly correct.

Shri H. V. Kamath: Mr. Vice-President, if I heard my friend aright, he did say just now that the words "any State" refers to only Parts I, II and III of the first Schedule. Then, why not say specifically and definitely in this amendment—"any State for the time being specified in Parts I of the First Schedule to III" and be done with it?

Shri K. M. Munshi: I may humbly point out to my friend that the heading of the First Schedule is "the States and Territories of India" under articles 1 and 4, and Nicobar Islands are territories; they are not States. Therefore, it is perfectly clear to any one who compares the two articles. I cannot add any further explanation to what I have given.

Shri H. V. Kamath: If the wise men of the Drafting Committee think so, and as ultimately they will have their own way in regard to this amendment right or wrong, I do not want to press this point.

Shri K. M. Munshi: The meaning as I understand it,—and I hope I have made it clear to the House—is perfectly clear and requires no further comment on my part.

The other point that has been raised—of course, it will be dealt with exhaustively by my Honourable friend Dr. Ambedkar when he replies generally—is about the use of the word "backward." There is one point of view which I would like to place before the House. I happen not to belong to the Scheduled Castes; and I am putting that point of view, which possibly may come better from me than my Honourable friend Dr. Ambedkar. Certain members of the Scheduled Castes have expressed a doubt whether by the use of the word "backward classes" their rights or privileges or opportunities will be curtailed in any manner. I cannot imagine for the life of me how, after an experience of a year and a half of the Constituent Assembly any honourable Member of the Scheduled Castes should have a feeling that they will not be included in the backward classes so long as they are backward. I cannot also imagine a time when there is any backward class in India which does not include the Scheduled Caste. But

the point I want to draw the attention of these Members to is this. Look at what has been going on in this House for the last year and a half. Take article 11. From the first time the draft was put before the sub-committee of the Minorities Committee—the Fundamental Rights Committee—there has not been a single member of the non-Scheduled Castes who has ever raised any objection to it. On the contrary, we members who do not belong to the Scheduled Castes, have in order to wipe out this blot on our society, been in the forefront in this matter. Not only that, but article 296 and even this particular proviso has been put in and supported fully by members of other communities and have been supported by the whole House. There need, therefore, be no fear that the House, as constituted at present or hereafter, will ever make a distinction or discriminate against the Scheduled Castes. That fear, I think, is entirely unfounded. What we want to secure by this clause are two things. In the fundamental right in the first clause we want to achieve the highest efficiency in the services of the State—highest efficiency which would enable the services to function effectively and promptly. At the same time, in view of the conditions in our country prevailing in several provinces, we want to see that backward classes, classes who are really backward, should be given scope in the State services; for it is realised that State services give a status and an opportunity to serve the country, and this opportunity should be extended to every community, even among the backward people. That being so, we have to find out some generic term and the word "backward class" was the best possible term. When it is read with article 301 it is perfectly clear that the word "backward" signifies that class of people—does not matter whether you call them untouchables or touchables, belonging to this community or that,—a class of people who are so backward that special protection is required in the services and I see no reason why any member should be apprehensive of regard to the word "backward."

Pandit Hirday Nath Kunzru: This is begging the question. To argue like this is to argue in a circle.

Shri K. M. Munshi: Well, I have not been able to trace the circle so far, inspite of my learned friend's attempt to make me do it.

An Honourable Member: Who are those backward classes?

Shri K. M. Munshi: Article 301 makes it clear that there will be a Commission appointed for the purpose of investigating what are backward classes. Some reference has been made to Madras. I may point out that in the province of Bombay for several years now, there has been a definition of backward classes, which includes not only Scheduled Castes and Scheduled Tribes but also other backward classes who are economically, educationally and socially backward. We need not, therefore, define or restrict the scope of the word 'backward' to a particular community. Whoever is backward will be covered by it and I think the apprehensions of the Honourable Members are not justified.

Shri T. T. Krishnamachari: Mr. Vice-President, Sir, I am afraid I am in a position of disadvantage, coming as I do after Mr. Munshi, whom the House knows as a very learned lawyer. I now see that his technique in advocacy is to confuse the judge, as—if I had heard him aright—he must have confused the minds of those Members of this House who had some doubts in regard to the provisions of article 10. Sir, I was reading recently in a newspaper the comments on this Constitution by a celebrated authority—Prof. Ivor Jennings, Vice-Chancellor of the Ceylon University—and he characterises this chapter of fundamental rights as a paradise for lawyers. And, as a piece of loose drafting, article 10 takes the palm. My own view, if I may be permitted to state it, is that this article had better not find a place in this Chapter on Fundamental Rights.

Let me take clause (1): "There shall be equality of opportunity for all citizens in matters of employment under the State." What class of citizens? Literates?

[Shri T. T. Krishnamachari]

Illiterates? Could an illiterate file a suit before the Supreme Court alleging that he has been denied equality of opportunity? This is not my own view. This is a statement of the view which I found expressed in Professor Jennings' criticism.

I now move on to clause (2). I am afraid this House has been put to a lot of trouble merely because of the attempt to accommodate my Honourable Friend Shri Jaspat Roy Kapoor by including the word 'residence' in this clause after the word 'birth'. This has been beginning of all the trouble. We have had an amendment by Shri K. M. Munshi and another by Shri Alladi Krishnaswami Ayyar. Is it at all necessary to include the word 'residence?'. I put it to the House that it is not necessary, because if there is discrimination because of 'residence' as there may be, you are not going to cover it up by putting it in here and taking it out in clause 2 (a).

An Honourable Member: Delete 2 (a) then.

Shri T. T. Krishnamachari: That is a matter for the House. But I suggest to the House that we can be impartial in this matter. We shall deny Mr. Jaspat Roy Kapoor the right to put in 'residence' and we shall deny Shri Alladi Krishnaswami Ayyar the occasion to bring in an explanatory sub-clause which would whittle down the concession given as much as possible.

Now let us turn to the wording of the particular amendment moved by Shri Alladi Krishnaswami Ayyar on which my Honourable Friend Mr. Munshi dilated at length. Sir, as I said before, I am not presuming to give any advice on the matter. Let us see what the Parliament is going to do? Is it going to pass a comprehensive law covering the needs of all the States, all the local bodies, all the village panchayats (which will also be States under the definition in Article 7) and all the universities?. Or, is it going to enact fresh legislation as and when occasion arises and as and when a particular local body or university or village panchayat asks for special exemption? Nothing is known as to what is naturally contemplated. We do not know what procedure is going to be laid down for this purpose, and this clause is so beautifully vague that we do not know whether Parliament is at all going to be moved in the matter for a comprehensive piece of legislation. Even then, what is the type of legislation it could enact?

The proposal of my friend Shri Jaspat Roy can be nullified if Parliament decides that there should be residence of at least ten years before a person can qualify for an officer in the area. Or, is Parliament going to put down one year or is it going to cover the position of refugees by putting in six months or nothing at all? My own view is that, instead of putting in a clause like 2 (a) which is so vague,—the doubt raised by my friend Mr. Kamath is quite right—we can safely trust the good sense of Parliament. We are leaving the whole thing to the good sense of Parliament, the legislatures, the Supreme Court and the advocates who will appear before that Court when we enact this Constitution in the manner in which it has been presented to us. I am afraid there must be some region where you must leave it to the good sense of some people, because we are here trying to prevent the good sense of people from nullifying the ideas which we hold today.

Sir, the amendment of Shri Alladi Krishnaswami Ayyar says: ".....under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment." I cannot really understand where any State comes in here, even after hearing the very able advocacy and admirable advocacy of Shri Munshi in support of the amendment. I suggest that both the ammendments be dropped. If any particular State disregards our views and insists on residential qualification it would not matter very much.

I now come to clause (3). Quite a number of friends objected to the word "backward' in this clause. I have no doubt many of them have pointed out that

when this House took a decision in this regard in this particular matter on a former occasion the word 'backward' did not find a place. It was an afterthought which the cumulative wisdom of the Drafting Committee has devised for the purpose of anticipating the possibility of this provision being applied to a large section of the community.

May I ask who are the backward class of citizens? It does not apply to a backward caste. It does not apply to a Scheduled caste or to any particular community. I say the basis of any future division as between 'backward' and 'forward' or non-backward might be in the basis of literacy. If the basis of division is literacy, 80 per cent. of our people fall into the backward class citizens. Who is going to give the ultimate award? Perhaps the Supreme Court. It will have to find out what the intention of the framers was as to who should come under the category of backward classes. It does not say 'caste.' It says 'class.' Is it a class which is based on grounds of economic status or on grounds of literacy or on grounds of birth? What is it?

My honourable Friend Mr. Munshi thinks that this word has fallen from heaven like manna and snatched by the Drafting Committee in all their wisdom. I say this is a paradise for lawyers. I do not know if the lawyers who have been on the Committee have really not tried to improve the business prospects of their clan and the opportunities of their community or class by framing a constitution so full of pitfalls.

Shri K. M. Munshi: Well, my honourable friend can attempt to become a lawyer.

Shri T. T. Krishnamachari: I am afraid I may have to, when people like Mr. Munshi desert the profession for other more lucrative occupations. If my friend wants me to say something saucy I can tell him that I could attempt that and do some justice to it.

Shri K. M. Munshi: You can, I know.

Shri T. T. Krishnamachari: I must apologise to you, Mr. Vice-President, for carrying on a conversation with Mr. Munshi notwithstanding the fact that he has been provocative. Anyhow the subject is not one which merits such sallies.

Sir, coming back to the merits of clause (3) my feeling is that this article is very loosely worded. That the word 'backward' is liable to different interpretations is the fear of some of my friends, though I feel that there is no need for such fear, because I have no doubt it is going to be ultimately interpreted by the Supreme authority on some basis, caste, community, religion, literacy or economic status. So I cannot congratulate the Drafting Committee on putting this particular word in; whatever might be the implication they had in their mind, I cannot help feeling that this clause will lead to a lot of litigation.

Sir, before I sit down I would like to put before the House a suggestion not to block the issue further either by admitting the amendment of Shri Jaspat Roy Kapoor or, as a sequel to it, the amendment of Shri Alladi Krishnaswami Ayyar.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I am going to say at the outset, before I deal with the specific questions that have been raised in the course of the debate, that I cannot accept amendment No. 334 moved by Mr. Misra; nor can I accept the two amendments moved by my friend, Mr. Naziruddin Ahmad, Nos. 336 and 337. I am prepared to accept the amendment of Mr. Imam No. 338, as amended by amendment No. 77 moved by Mr. Ananthasayanam Ayyangar. I am also prepared to accept the amendment of Mr. Kapoor, *viz.* No. 340, as amended by amendments Nos. 81 and 82 moved by my friends Mr. Munshi and Mr. Alladi Krishnaswami Ayyar.

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I do not think that I am called upon to say anything with regard to amendments Nos. 334, 356 and 337. Such observations, therefore, as I shall make in the course of my speech will be confined to the question of residence about which there has been so much debate and the use of the word "backward" in clause (3) of article 10, My friend, Mr. T. T. Krishnamachari, has twitted the Drafting Committee that the Drafting Committee, probably in the interests of some members of that Committee, instead of producing a Constitution, have produced a paradise for lawyers. I am not prepared to say that this Constitution will not give rise to questions which will involve legal interpretation or judicial interpretation. In fact, I would like to ask Mr. Krishnamachari if he can point out to me any instance of any Constitution in the world which has not been a paradise for lawyers. I would particularly ask him to refer to the vast storehouse of law reports with regard to the Constitution of the United States, Canada and other countries. I am therefore not ashamed at all if this Constitution hereafter for purposes of interpretation is required to be taken to the Federal Court. That is the fate of every Constitution and every Drafting Committee. I shall therefore not labour that point at all.

Now, with regard to the question of residence. The matter is really very simple and I cannot understand why so intelligent a person as my friend Mr. T. T. Krishnamachari should have failed to understand the basic purpose of that amendment.

Shri T. T. Krishnamachari: For the same reason as my honourable Friend had for omitting to put that word originally in the article.

The Honourable Dr. B. R. Ambedkar: I did not quite follow. I shall explain the purpose of this ammendment. It is the feeling of many persons in this House that, since we have established a common citizenship throughout India, irrespective of the local jurisdiction of the provinces and the Indian States, it is only a concomitant thing that residence should not be required for holding a particular post in a particular State because, in so far as you make residence a qualification, you are really subtracting from the value of a common citizenship which we have established by this Constitution or which we propose to establish by this Constitution. Therefore in my judgment, the argument that residence should not be a qualification to hold appointments under the State is a perfectly valid and a perfectly sound argument. At the same time, it must be realised that you cannot allow people who are flying from one province to another, from one State to another, as mere birds of passage without any roots, without any connection with that particular province, just to come, apply for posts and, so to say, take the plums and walk away. Therefore, some limitation is necessary. It was found, when this matter was investigated, that already today in very many provinces rules have been framed by the provincial governments prescribing a certain period of residence as a qualification for a post in that particular province. Therefore the proposal in the amendment that, although as a general rule residence should not be a qualification, yet some exception might be made, is not quite out of the ordinary. We are merely following the practice which has been already established in the various provinces. However, what we found was that while different provinces were laying down a certain period as a qualifying period for posts, the periods varied considerably. Some provinces said that a person must be actually domiciled. What that means, one does not know. Others have fixed ten years, some seven years and so on. It was therefore felt that, while it might be desirable to fix a period as a qualifying test, that qualifying test should be uniform throughout India. Consequently, if that object is to be achieved, *viz.*, that the qualifying residential period should be uniform, that object can be achieved only by giving the power to Parliament and not

giving it to the local units, whether provinces or States. That is the underlying purpose of this amendment putting down residence as a qualification.

With regard to the point raised by my friend, Mr. Kamath, I do not propose to deal with it because it has already been dealt with by Mr. Munshi and also by another friend. They told him why the language as it now stands in the amendment is perfectly in accord with the other provisions of this Constitution.

Now, Sir, to come to the other question which has been agitating the members of this House, *viz.*, the use of the word "backward" in clause (3) of article 10, I should like to begin by making some general observations so that members might be in a position to understand the exact import, the significance and the necessity for using the word "backward" in this particular clause. If members were to try and exchange their views on this subject, they will find that there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all. Of the three points of view, the first is that there shall be equality of opportunity for all citizens. It is the desire of many Members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post or not and that there ought to be no limitations, there ought to be no hindrance in the operation of this principle of equality of opportunity. Another view mostly shared by a section of the House is that, if this principle is to be operative—and it ought to be operative in their judgment to its fullest extent—there ought to be no reservations of any sort for any class or community at all, that all citizens, if they are qualified, should be placed on the same footing of equality so far as the public services are concerned. That is the second point of view we have. Then we have quite a massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration. As I said, the Drafting Committee had to produce a formula which would reconcile these three points of view, firstly, that there shall be equality of opportunity, secondly that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration. If honourable Members will bear these facts in mind—the three principles, we had to reconcile,—they will see that no better formula could be produced than the one that is embodied in sub-clause (3) of article 10 of the Constitution; they will find that the view of those who believe and hold that there shall be equality of opportunity, has been embodied in sub-clause (1) of Article 10. It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration which has now—for historical reasons—been controlled by one community or a few communities, that situation should disappear and that the others also must have an opportunity of getting into the public services. Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. Let me give an illustration. Supposing, for instance, reservations were made for a community or a collection of communities, the total of which came to something like 70 per cent. of the total posts under the State and only 30 per cent. are retained as the unreserved. Could anybody say that the reservation of 30 per cent. as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity? It

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cannot be in my judgment. Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause(1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation. If honourable Members understand this position that we have to safeguard two things namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, then, I am sure they will agree that unless you use some such qualifying phrase as "backward" the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain. That I think, if I may say so, is the justification why the Drafting Committee undertook on its own shoulders the responsibility of introducing the word 'backward' which, I admit, did not originally find a place in the fundamental right in the way in which it was passed by this Assembly. But I think honourable Members will realise that the Drafting Committee which has been ridiculed on more than one ground for producing sometimes a loose draft, sometimes something which is not appropriate and so on, might have opened itself to further attack that they produced a Draft Constitution in which the exception was so large, that it left no room for the rule to operate. I think this is sufficient to justify why the word 'backward' has been used.

With regard to the minorities, there is a special reference to that in Article 296, where it has been laid down that some provision will be made with regard to the minorities. Of course, we did not lay down any proportion. That is quite clear from the section itself, but we have not altogether omitted the minorities from consideration. Somebody asked me: "What is a backward community"? Well, I think any one who reads the language of the draft itself will find that we have left it to be determined by each local Government. A backward community is a community which is backward in the opinion of the Government. My honourable Friend, Mr. T. T. Krishnamachari asked me whether this rule will be justiciable. It is rather difficult to give a dogmatic answer. Personally I think it would be a justiciable matter. If the local Government included in this category of reservations such a large number of seats, I think one could very well go to the Federal Court and the Supreme Court and say that the reservation is of such a magnitude that the rule regarding equality of opportunity has been destroyed and the court will then come to the conclusion whether the local Government or the State Government has acted in a reasonable and prudent manner. Mr. Krishnamachari asked: "Who is a reasonable man and who is a prudent man? These are matters of litigation". Of course, they are matters of litigation, but my honourable Friend, Mr. Krishnamachari will understand that the words "reasonable persons and prudent persons" have been used in very many laws and if he will refer only to the Transfer of Property Act, he will find that in very many cases the words "a reasonable person and a prudent person" have very well been defined and the court will not find any difficulty in defining it. I hope, therefore that the amendments which I have accepted, will be accepted by the House.

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

The Honourable Dr. B. R. Ambedkar: I am sorry I forgot to say that I accept amendment No. 342.

Mr. Vice-President: The question is:—

"That in clause (2) of article 10, for the word 'on grounds only' the words 'on grounds' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That clauses (2), (3) and (4) of article 10 be deleted."

The motion was negatived.

Mr. Vice-President: The question is:

"That for clause (2) of article 10, the following clause be substituted :—

"(2) Every citizen shall be eligible for office under any State irrespective of his religion, caste, sex, descent or place of birth."

The motion was negatived.

Mr. Vice-President: I shall put to vote amendment No. 338 as amended by No. 77 of List No. 1 which has already been accepted by the Chairman of the Drafting Committee. The question is:—

"(i) That in clause (1) of article 10, for the words 'in matters of employment', the words 'in matters relating to employment or appointment to office' be substituted."

(ii) That in clause (2) of article 10, after the words 'ineligible for any' the words 'employment or' be inserted."

The motion was adopted.

Mr. Vice-President: The question is:

"That in clause (2) of article 10, after the words 'place of birth' the words 'in India' be added."

The motion was negatived.

Mr. Vice-President: I will now put amendment No. 340 as modified by amendment No. 81 of List No. III to the vote.

Shri H. V. Kamath: I submit, Sir, that amendments 81 and 82 will have to be put to the vote first.

Mr. Vice-President: There is no difference so far as I can see in regard to amendment No. 81 and if you insist, I am prepared to put it separately. I would like to carry the House with me, so long as it is legitimate.

Shri H. V. Kamath: I think it would be better, but I do not insist.

Mr. Vice-President: You do not insist. Then let me proceed in my own inadequate way.

Mr. Vice-President: The question is:

"That in clause (2) of articles 10, after the word 'birth' the word 'residence' be inserted"

The motion was adopted.

Mr. Vice-President: The question is:

That after clause (2) of article 10, the following new clause be inserted:—

"(2a) Nothing in this article shall prevent Parliament from making any laws prescribing in regard to a class or classes of employment or appointment to an office under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment."

The motion was adopted.

Mr. Vice-President: The question is:

"That in clause (2) or article 10, after the word 'ineligible' the words 'or discriminated against' be inserted."

The motion was adopted.

Mr. Vice-President: The question is:

That clause (3) of article 10 be deleted.

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (3) of article 10, for the words 'shall prevent the State from making any provision for the reservation' the words 'shall, during a period of ten years after the commencement of this Constitution, prevent the State from making any reservation' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (3) of article 10 the word 'backward' be omitted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (4) of article 10, after the words 'in connection with' the word 'managing' be added, and the words 'or denomination' be deleted."

The amendment was negatived.

Mr. Vice-President: I shall now put the article as a whole as amended by amendment No. 338, (as modified by amendment No. 77), as amended by amendment No. 340 as modified by amendments numbers 81 and 82 of list III, and as further amended by amendment No. 342. The question is.

That this Article in this modified form stand part of the Constitution.

The motion was adopted.

Article 10, as amended, was added to the Constitution.

Article 12

Mr. Vice-President: We come to Article 12.

An Honourable Member: What about Article 10-A, Sir?

Mr. Vice-President: So far as our records show, that was finished. That was not moved.

The motion before the House is:

"That article 12 form part of the Constitution."

The first amendment is No. 383, standing in the name of Pandit Lakshmi Kanta Maitra and others.

(Amendment No. 383 was not moved.)

Mr. Vice-President: Amendment No. 384 is out of order.

(Amendment No. 385 was not moved.)

Mr. Vice-President: Amendments Nos. 386 and 392 may be considered together. I can allow amendment No. 386 to be moved. It stands in the name of Shri Kamleshwari Prasad Yadav.

(Amendments numbers 386 and 392 were not moved.)

Mr. Vice-President: Amendments Nos. 387 and 394 are of similar import. I shall allow amendment number 387 to be moved. One thing more: before you speak, I want to know whether Mr. A. K. Menon in whose name amendment No. 394 stands, wants to press it.

Shri A. K. Menon: (Madras: General): No, Sir.

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

"That in clause (1) of article 12, after the word "title" the words 'not being a military or academic distinction' be inserted."

Sir, article 12 clause (1) will read, as amended, as follows:

"No title not being a military or academic distinction shall be conferred by the State."

The history of this particular article the Members of the House know very well. Generally, public opinion has been against any titles being granted. The House is also aware that consequent on India becoming independent, several people who had accepted titles from our British Rulers in the past had given up their titles, though some of them do retain them still. There has been a proposal at one stage that it is the intention of the members of the Drafting Committee to exclude only hereditary titles or other privileges of birth; but Dr. Ambedkar has chosen not to move it. Actually, if he had moved it, it would have made the position of those people who did not have any hereditary titles, but resigned their titles with the advent of independence, very difficult. Then, it would mean that the Government could grant titles like Dewan Bahadur, something analogous to knighthood, and so on. It would put those people who have been patriotic enough to resign their titles at the time that we got independence in a very invidious position.

Even now, in my view, the article is not complete; because, without a specific non-recognition of titles already granted by the British, those people who have been good enough to resign their titles have no benefit. Some have resigned their titles in order to get jobs; and they have got jobs. Other people have resigned; and they have got nothing out of it. Some people have kept their titles and those titles are recognised by the present Government. It makes the position of those people who have resigned their titles very sad. It may probably be that in course of time the Government will refuse to recognise those titles. I know the one Paper which is very near to the Government refuses to recognise such titles. Personally, I think, if the House would permit me to make a personal remark, from my point of view, the retention of titles is beneficial. Here is an honourable Member of the House who bears the same name as mine. He even went to England along with me. He is a titled gentleman; I am not and that helps to avoid confusion and I am glad he retained his title. That is by the way. What I really mean by this amendment is that certain type of titles has to be permitted. For instance, honourable Members of this House know that the Government have decided on three types of Military distinction to be granted in the future Mahavir Chakra, Parama Vir Chakra and Vir Chakra. Please do not confuse this with the name of our friend Mahabir Tyagi, a very distinguished Member of this House, to whom the title was given by his parents. In course of time, these Vir Chakras will become Bir Chakras. This amendment is moved to make provision for these Military distinctions.

In regard to academic distinctions, you may ask, academic distinctions are not conferred by the State. It may probably be that, some time later, the State might be willing to revive titles like Mahamahopadhyaya which will probably be classed as academic.

Even so, in consonance with the definition of State in article 7, the University becomes a State and no one in the House can say, that the University is something completely divorced from State. So much so, the titles granted by Universities or academic institutions have to be provided for as one cannot completely exclude it from the scope of clause (1) of article 12 as it stands now, The House might ask whether those titles earned by us by sitting for an examination however insignificant it might be like mine or however big it might be like Dr. Ambedkar's, will those titles come under the scope of article 12 because the holder had to sit for an examination and get it. These will not come under article 12. But there are titles which are *Honoris Causa*. For instance the House knows that our Prime Minister, Deputy Minister, Ministers and Governor-General are being showered with Doctorates wherever they go and wherever there happens to be a mushroom University. To provide for contingencies of that sort and also so that when other Members of the House

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become Ministers they might also get these titles, we are providing by this amendment that academic distinctions should be excluded from the scope of this sub-clause. I hope the House fully understands the meaning of this amendment, which in my view takes stock of things to come and provides for them. I hope the House will accept my amendment.

Mr. Vice-President: Amendments No. 388, 389, first part of 390, 391, 395 to 397 are of similar import. 389 may be moved.

Shri Lokanath Misra: Sir, I beg to move:

"That in clause (1) of article 12, after the words "be conferred" the words "or recognised" be inserted."

Sir, this is a small amendment. I beg to submit that if you are going to abolish all titles, it is also proper that those people who have already titles rightly or wrongly should no more be recognized. We know that titles are appendages and titles give a different view to the man and we know instances where people have got titles which they do not deserve and the entitled gentlemen belies the import of the title. I therefore submit that we should not only abolish all titles, we should also cease to recognise any title that has been conferred, but recognised by none of us.

Mr. Vice-President: I would like to know whether the mover of amendment No. 388 wants it to be put to vote.

Shri H. V. Kamath: Yes, Sir.

Mr. Vice-President: No. 390 first part. I want to know whether this should be put to vote.

Prof. K. T. Shah: Yes.

Mr. Vice-President: 391 is the same. 393, 396 and 397 are not moved. 390 (second part) is disallowed as being a verbal amendment. I can allow 398, 399 and 400 to be moved.

(Nos. 398 and 399 were not moved).

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move:

"That for clause (2) of article 12 the following clause be substituted :—

"(2) No title conferred by any foreign State on any citizen of India shall be recognised by the State."

This word 'the' before "State" is a consequential change. Sir, the clause which this amendment seeks to replace runs thus:—

"No citizen of India shall accept any title from any foreign State."

What is prohibited by the original clause is the 'acceptance' of a title. I would ask: if anybody accepts any foreign title, what is the penalty which is provided? No penalty is provided for accepting it. The State has no means of giving effect to this clause. If anybody accepts a title from a foreign State, what are you going to do—send him to rigorous imprisonment for six months?

The Honourable Dr. B. R. Ambedkar: The State shall not recognize it.

Mr. Naziruddin Ahmad: I am grateful for the interruption. My amendment is exactly this that no title conferred by any foreign State on the citizens of India shall be recognised by the State. The honourable Member Dr. Ambedkar has stated very kindly that the State shall not recognize it. That is really the form in which it should be stated. Supposing any title is conferred upon any honourable Member here by a foreign State and if he accepts it, you have no means of effecting a compliance with clause (2). All that you can do as has been rightly pointed out by Dr. Ambedkar is that you do not recognise

it; and that is the form in which this amendment stands. I do not think any further authority is necessary than the interjection of Dr. Ambedkar to support my amendment.

(Amendments Nos. 401, 402 and 403 were not moved.)

Shri Algu Rai Shastri (United Provinces: General): *[I am not moving this amendment because a similar amendment was moved earlier by Shri Krishnamachari and I agree with him. I, therefore, do not move my amendment.]

Mr. Vice-President: 404 is not moved. 405, 407, 410 and 411 are of similar nature. I rule that amendment No. 405 may be moved.

(Amendments Nos. 405, 407, 410, 411 and 406 were not moved.)

Mr. Vice-President: Amendment Nos. 408 and 409 are verbal ones and therefore I disallow them. Now for general discussion. Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, Sir, with your permission, I want to say a few words in support of the amendment.

Mr. Vice-President: I can allow you discussion on the clause as a whole, but cannot allow you to speak about your own amendment.

Shri H. V. Kamath: With your permission, I want to refer to the amendment of some other member. I want to say something in support of the amendment moved by my friend Mr. Lokanath Misra. But before I come to that, I would like to say one or two words about the doubt or difficulty raised by my friend Mr. Naziruddin Ahmad in the course of his motion on amendment No. 400. He wanted to know if a member of the House, or for the matter of that, if a citizen of India, is invested with a title by any foreign State, what will happen? Shall we sentence him to rigorous imprisonment? But I say the remedy is easy. We can say that the citizen who accepts that title forfeits his citizenship of India. Such a remedy is open to us, in accordance with the provision of this article.

Mr. Naziruddin Ahmad: But there is no provision to that effect.

Shri H. V. Kamath: I suppose it will flow from the existing provision.

Now, coming to the amendment which was moved by Mr. Misra, and which I am going to support, the amendment says that titles should neither be conferred nor recognized by the State. I think, it is a very important provision in the new set-up of our country. It is one thing to say that titles should not be conferred and quite another thing to say that titles shall not be recognized. Unfortunately, Sir, even today in our country, even after the British have quitted our country, the toys or the baubles that the British have left behind still remain with us. Of course, we cannot compel our fellow-citizens, our brethren here, to give up the titles that they might have received at the hands of their erstwhile British Masters. There may not be any compulsion. But certainly, we can see to it that the State, that is to say, the Government does not in any way recognise those titles. I will illustrate my point. In most, or at least some of the government documents, records or communiques or press-notes issued by the Government from time to time, officers of the State, including ambassadors abroad, are referred to along with their titles. If I remember aright, our Charge-d-Affaires in Paris, and our Ambassador in America, whenever their names are mentioned by the Government in a press-note or communique, their titles go along with their names. The titles are not dropped. I for one, fail to see why Government should continue to recognise or mention these titles in the course of their official communiques or notes.—I remember very well, that after the Russian Revolution, and after the revolution in Turkey 25 years ago, whatever titles had been bestowed by the former regime

* [ ] Translation of Hindustani speech.

[Shri H. V. Kamath]

were abolished and those who did not choose to give up such titles were given no importance whatsoever. The State did not refer to those titles whenever they referred to the names.

Of course, it may be argued against the amendment of Mr. Misra, that it is not possible to make this a justiciable right. But certainly, I fail to see, if clause (1) of article 12 can be made a justiciable right, why not this? I have got very serious doubts on the point whether clause (1) of article 12 can be a justiciable, fundamental right. No title shall be conferred by the State. But if the State inadvertently or in a fit of absent-mindedness or due to some other cause, does confer titles, what can be done against the State? After all, the State itself has conferred the title. Will you proceed against the State? If you can proceed against the State in that eventuality, there is no reason why the State cannot be proceeded against, if the State in any way recognises a title conferred by the erstwhile British masters. I therefore, support Mr. Misra's amendment. So far as those titles are concerned which are still with us unfortunately, and so far as those title-holders are concerned the Government of India should not recognise them in any way whatsoever in their documents or references or in any other way. If there is any legal difficulty about incorporating it as a justiciable fundamental right, I shall be happy to hear from my learned friend Dr. Ambedkar that the principle is acceptable, and if it can be embodied in the Constitution somewhere, or if it could be brought forward in Parliament by means of a special bill, to the effect that the State will not recognise titles, then I shall be happy. I also hope that in that event, my friend Mr. Misra will not press his amendment.

Shri R. K. Sidhwa (C. P. and Berar: General): Mr. Vice-President, Sir, the conferment of titles during the British regime has been so scandalous that a large section of the people of the country has always viewed it with contempt. Therefore I am very glad that in this House and everywhere outside also, today the conferment of titles is looked upon with equal contempt, and this Constitution rightly provides that there should be no titles conferred upon anyone by the State.

If you refer to clause(3) a concession has been made of a person upon whom a title is conferred by a foreign State. Sir, if our State does not recognise in our own country the conferment of titles, I really fail to understand why we should allow even a foreign State to confer a title upon one of our own citizens. I am of the opinion that the word 'title' should be omitted from the clause. It says—

> "No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, title or office of any kind from or under any foreign State."

Sir, emoluments, we can understand. Presents we can understand, but why titles? The whole object of this article is not to confer titles; then why include 'title' in clause (3)? The beauty of this article is really spoilt by this little word. I support this article, but I should have preferred that foreign states also should not be allowed to confer any title on any of our countrymen.

The Honourable Dr. B. R. Ambedkar: Sir, I accept the amendment moved by my Friend Mr. T. T. Krishnamachari.

With regard to the amendment moved by my friend Mr. Naziruddin Ahmad, he wanted the word "accepted" to be substituted by the word "recognised". His argument was, supposing the citizen does accept a title, what is the penal provision in the Constitution which would nullify that act? My answer to that is very simple: that it would be perfectly open under the Constitution for