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1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 14th August 1947

The Fifth Session of the Constituent Assembly of India commenced in the Constitution Hall, New Delhi, at Eleven P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

SINGING OF *VANDE MATARAM*

Mr. President: The first item on the Agenda is the singing of the first verse of *VANDE MATARAM*. We will listen to it all standing.

Shrimati Sucheta Kripalani (U. P.: General) sang the first verse of the VANDE MATARAM song.

PRESIDENT'S ADDRESS

Mr. President:

(Mr. President then delivered his address in Hindustani the full text of which is published in the Hindustani edition of the Debates.)

In this solemn hour of our history when after many years of struggle we are taking over the governance of this country let us offer our humble thanks to the Almighty Power that shapes the destinies of men and nations and let us recall in grateful remembrance the services and sacrifices of all those men and women, known and unknown, who with smiles on their face walked to the gallows or faced bullets on their chests, who experienced living death in the cells of the Andamans, or spent long years in the prisons of India, who preferred voluntary exile in foreign countries to a life of humiliation in their own, who not only lost wealth and property but cut themselves off from near and dear ones to devote themselves to the achievement of the great objective which we are witnessing today.

Let us also pay our tribute of love and reverence to Mahatma Gandhi who has been our beacon light, our guide and philosopher during the last thirty years or more. He represents that undying spirit in our culture and make-up which has kept India alive through vicissitudes of our history. He it is who pulled us out of the slough of despond and despair and blowed into us a spirit which enabled us to stand up for justice, to claim our birth-right of freedom and placed in our hands the matchless and unfailing weapon of Truth and Non-violence which without arms and armaments has won for us the invaluable prize of Swaraj at a price which, when the history of these times comes to be written, will be regarded as incredible for a vast country of our size and for the teeming millions of our population. We were indifferent instruments that he had to work with but he led us with consummate skill, with unwavering determination, with an

[Mr. President]

undying faith in our future, with faith in his weapon and above all with faith in God. Let us prove true to that faith. Let us hope that India will not in the hour of her triumph give up or minimise the value of the weapon which served not only to rouse and inspire her in her moments of depression but has also proved its efficacy. India has a great part to play in the shaping and moulding of the future of a war-distracted world. She can play that part not by mimicking, from a distance, what others are doing, or by joining in the race for armaments and competing with others in the discovery of the latest and most effective instruments of destruction. She has now the opportunity, and, let us hope, she will have the courage and strength to place before the world for its acceptance her infallible substitute for war and bloodshed, death and destruction. The world needs it and will welcome it, unless it is prepared to reel back into barbarism from which it boasts to have emerged.

Let us then assure all countries of the world that we propose to stick to our historic tradition to be on terms of friendship and amity with all, that we have no designs against any one and hope that none will have any against us. We have only one ambition and desire, that is, to make our contribution to the building up of freedom for all and peace among mankind.

The country which was made by God and Nature to be one stands divided today. Separation from near and dear ones, even from strangers after some association, is always painful. I would be untrue to myself if I did not at this moment confess to a sense of sorrow at this separation. But I wish to send on your behalf and my own our greetings and good wishes for success and the best of luck in the high endeavour of government in which the people of Pakistan, which till today has been a part and parcel of ourselves, will be engaged. To those who feel like us but are on the other side of the border we send a word of cheer. They should not give way to panic but should stick to their hearths and homes, their religion and culture, and cultivate the qualities of courage and forbearance. They have no reason to fear that they will not get protection and just and fair treatment and they should not become victims of doubt and suspicion. They must accept the assurances publicly given and win their rightful place in the polity of the State, where they are placed, by their loyalty.

To all the minorities in India we give the assurance that they will receive fair and just treatment and there will be no discrimination in any form against them. Their religion, their culture and their language are safe and they will enjoy all the rights and privileges of citizenship, and will be expected in their turn to render loyalty to the country in which they live and to its constitution. To all we give the assurance that it will be our endeavour to end poverty and squalor and its companions, hunger and disease; to abolish distinctions and exploitation and to ensure decent conditions of living.

We are embarking on a great task. We hope that in this we shall have the unstinted service and co-operation of all our people and the sympathy and support of all the communities. We shall do our best to deserve it.

Mr. President: After this I propose that we all stand in silence to honour the memory of those who have died in the struggle for freedom in India and elsewhere.

(The Assembly stood in silence for two minutes.)

MOTION *RE.* PLEDGE BY MEMBERS

Mr. President: Pandit Jawaharlal Nehru will now move the Motion which stands in his name.

The Honourable Pandit Jawaharlal Nehru (U. P.: General): *[Mr. President, many years ago we had made a tryst with destiny itself. We had taken a pledge, a vow. Now the time has come to redeem it. But perhaps the pledge has not yet been redeemed fully though stages have been reached in that direction. We have almost attained independence. At such a moment it is only appropriate that we take a new pledge, a new vow to serve India and her people. After a few moments, this Assembly will assume the status of a fully free and independent body, and it will represent an independent and free country. Therefore great responsibilities are to devolve upon it. If we do not realise the importance of our responsibilities then we shall not be able to discharge our duties fully. Hence it becomes essential for us to take this pledge after fully understanding all its implications. The resolution that I am presenting before you relates to that pledge. We have finished one phase, and for that rejoicings are going on today. Our hearts are full of joy and some pride and satisfaction. But we know that there is no rejoicing in the whole of the country. There is enough of grief in our hearts. Not far from Delhi, big cities are ablaze and its heat is reaching us here. Our happiness cannot be complete. At this hour we have to face all these things with a brave heart. We are not to raise a hue and cry and get perturbed. When the reins of Government have come to our hands, we have to do things in the right way. Generally, countries wrest their freedom after great bloodshed, tears and toil. Much blood has been spilt in our land, and in a way which is very painful. Notwithstanding that, we have achieved freedom by peaceful methods. We have set a new example before the world. We are free now but along with freedom, come responsibilities and burdens. We have to face them, and overcome them all. Our dream is now about to be translated into reality. The task of wresting freedom and ousting the foreign government was before us till now and that task is now accomplished. But up-rooting the foreign domination is not all. Unless and until each and every Indian breathes the air of freedom and his miseries are banished and his hard lot is improved, our task remains unfinished. Therefore a large portion of our task remains to be done, and we shall try to accomplish it. Big problems confront us and at their sight sometimes our heart quivers, but, then again, the thought that in the past we have faced many a

*[English translation of Hindustani speech.

[The Honourable Pandit Jawaharlal Nehru]

big problem and we shall do so again, gives us courage. Shall we be cowed down by these? It is not the individual pride and strength that is comforting, rather it is the pride of the country and the nation, and a confidence in people who have suffered terribly for the cause that makes me feel bold to think we shall successfully shoulder the huge burden of hardships, and find a solution of these problems. After all, India is now free. That is well and good. At a time when we are on the threshold of freedom we should remember that India does not belong to any one party or group of people or caste. It does not belong to the followers of any particular religion. It is the country of all, of every religion and creed. We have repeatedly defined the type of freedom we desire. In the first resolution, which I moved earlier it has been said that our freedom is to be shared equally by every Indian. All Indians shall have equal rights, and each one of them is to partake equally in that freedom. We shall proceed like that, and whosoever tries to be aggressive will be checked by us. If anyone is oppressed we shall stand by his side. If we follow this path then we shall be able to solve big problems, but if we become narrow-minded we shall not be able to solve them.

I shall read out in English this resolution which I am now putting before you.]*

Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting that at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity.

At the dawn of history India started on her unending quest, and trackless centuries are filled with her striving and the grandeur of her successes and her failures. Through good and ill fortune alike she has never lost sight of that quest or forgotten the ideals which gave her strength. We end today a period of ill fortune and India discovers herself again. The achievement we celebrate today is but a step, an opening of opportunity, to the greater triumphs and achievements that await us. Are we brave enough and wise enough to grasp this opportunity and accept the challenge of the future?

Freedom and power bring responsibility. That responsibility rests upon this Assembly, a sovereign body representing the sovereign people of India. Before the birth of freedom we have endured all the pains of labour and our hearts are heavy with the memory of this sorrow. Some of those pains continue even now. Nevertheless the past is over and it is the future that beckons to us now.

That future is not one of ease or resting but of incessant striving so that we might fulfil the pledges we have so often taken and the one we shall take today. The service of India means the service of

]* English translation of Hindustani speech.

the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us but as long as there are tears and suffering, so long our work will not be over.

And so we have to labour and to work and work hard to give reality to our dreams. Those dreams are for India, but they are also for the world, for all the nations and peoples are too closely knit together today for any one of them to imagine that it can live apart. Peace has been said to be indivisible; so is freedom, so is prosperity now, and so also is disaster in this One World that can no longer be split into isolated fragments.

To the people of India, whose representatives we are, we make appeal to join us with faith and confidence in this great adventure. This is no time for petty and destructive criticism, no time for ill-will or blaming others. We have to build the noble mansion of free India where all her children may dwell.

I beg to move, Sir.

"That it be resolved that:

(1) After the last stroke of midnight, all members of the Constituent Assembly present on this occasion, do take the following pledge:

'At this solemn moment when the people of India, through suffering and sacrifice, have secured freedom, I,..... ' a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind;'

(2) Members who are not present on this occasion do take the pledge (with such verbal changes as the President may prescribe) at the time they next attend a session of the Assembly." (*Loud applause.*)

Chaudhari Khaliquzzaman (United Provinces: Muslim): *[Mr. President, after midnight today a great revolution is to take place in the history of India; a revolution for which India had been working for the last one hundred years in her fight for freedom, an event for which many Indians have sacrificed their lives to achieve is now approaching very near. Now that as a result of these sacrifices we have achieved this freedom, a new question confronts us, which is even more vital. That struggle is over but a fresh one of a different type is to begin; this new struggle is not to be fought against any outsider but is to be settled among our own selves. It is evident that when a nation had to fight against another nation we were swayed by different emotions, we had to adopt different tactics and different methods. Now the time has come when we shall have to shoulder great responsibilities when there will be no room for clapping and for high-sounding slogans. After today the task before this House, before the leaders of the country, will not be a spectacular one but one that requires diligence, industry and service to the people. We know that great responsibility rests on this Assembly and that is of framing a Constitution, which would be acceptable not only to the minorities but

*[English translation of Hindustani speech.

[Chaudhari Khaliquzzaman]

also to all the people of the country, to the poor and to the common man, and through which we may serve the people of India. This is the greatest task. Similarly, this House has to shoulder the responsibility of the administration of the country till such time as fresh elections are held. The administrative responsibility sometimes brings with it scoldings and one has to put up with abuses etc., and is even subjected to brickbats. But all this has to be endured. A reading of the pledge, which is before us now, shows that it entails heavy responsibility. Ordinarily, I think that all the members, when they came here, had already taken the pledge of serving their country honestly and faithfully and as best as they could. But a pledge formally administered leaves some psychological effect on the mind of every person. Hence, I think that today, before we shoulder the responsibility, this is a most opportune moment for all of us to bind ourselves with this pledge that henceforth all our actions and deeds would primarily be directed towards the good of the State and no communal considerations would be allowed to prevail and we shall do our utmost to give everyone his due. After taking this pledge, when we step out of this Chamber, we shall give a message to the people of the country that we have taken a vow honestly to shoulder the responsibility, and in discharging our duties we shall show no favour to anyone.

With these words, I support the pledge and the motion moved by Pandit Nehru. I think that every one of the members, present here, will faithfully and honestly take this pledge that he would devote his life to the service of the State.]*

Dr. S. Radhakrishnan (United Provinces: General): Mr. President, Sir, it is not necessary for me to speak at any great length on this Resolution so impressively moved by Pandit Jawaharlal Nehru and seconded by Mr. Khaliquzzaman. History and legend will grow round this day. It marks a milestone in the march of our democracy. A significant date it is in the drama of the Indian people who are trying to rebuild and transform themselves. Through a long night of waiting, a night full of fateful pertents and silent prayers for the dawn of freedom, of haunting spectres of hunger and death, our sentinels kept watch, the lights were burning bright till at last the dawn is breaking and we greet it with the utmost enthusiasm. When we are passing from a state of serfdom, a state of slavery and subjection to one of freedom and liberation, it is an occasion for rejoicing. That it is being effected in such an orderly and dignified way is a matter for gratification.

Mr. Attlee spoke with visible pride in the House of Commons when he said that this is the first great instance of a strong Imperialist power transferring its authority to a subject people whom it ruled with force and firmness for nearly two centuries. For a parallel he cited the British withdrawal from South Africa; but it is nothing comparable in scale and circumstances to the British withdrawal from this country. When we see what the Dutch are doing in Indonesia, when we see how the French are clinging to their possessions, we cannot but admire the political sagacity and courage of the British people. (*Cheers.*)

*[English translation of Hindustani speech.

We on our side, have also added a chapter to the history of the World. Look at the way in which subject peoples in history won their freedom. Let us also consider the methods by which power was acquired. How did men like Washington, Napoleon, Cromwell, Lenin, Hitler and Mussolini get into power? Look at the methods of blood and steel, of terrorism and assasination, of bloodshed and anarchy by which these so-called great men of the world came into the possession of power. Here in this land under the leadership of one who will go down in history as perhaps the greatest man of our age (*loud cheers*) we have opposed patience to fury, quietness of spirit to bureaucratic tyranny and are acquiring power through peaceful and civilised methods. What is the result? The transition is being effected with the least bitterness, with utterly no kind of hatred at all. The very fact that we are appointing Lord Mountbatten as the Governor-General of India shows the spirit of understanding and friendliness in which this whole transition is being effected. (*Cheers.*)

You, Mr. President, referred to the sadness in our hearts, to the sorrow which also clouds our rejoicings. May I say that we are in an essential sense responsible for it also though not entirely. From 1600, Englishmen have come to this country—priests and nuns, merchants and adventurers, diplomats and statesmen, missionaries and idealists. They bought and sold, marched and fought, plotted and profited, helped and healed. The greatest among them wished to modernise the country, to raise its intellectual and moral standards, its political status. They wished to regenerate the whole people. But the small among them worked with sinister objectives. They tried to increase the disunion in the country, made the country poorer, weaker and more disunited. They also have had their chance now. The freedom we are attaining is the fulfilment of this dual tendency among British administrators. While India is attaining freedom, she is attaining it in a manner which does not produce joy in the hearts of people or a radiant smile on their faces. Some of those who were charged with the responsibility for the administration of this country, tried to accentuate communal consciousness and bring about the present result which is a logical outcome of the policies adopted by the lesser minds of Britain. But I would never blame them. Were we not victims, ready victims, so to say, of the separatist tendencies foisted on us? Should we not now correct our national faults of character, our domestic despotism, our intolerance which has assumed the different forms of obscurantism, of narrow-mindedness, of superstitious bigotry? Others were able to play on our weakness because we had them. I would like therefore to take this opportunity to call for self-examination, for a searching of hearts. We have gained but we have not gained in the manner we wished to gain and if we have not done so, the responsibility is our own. And when this pledge says that we have to serve our country, we can best serve our country by removing these fundamental defects which have prevented us from gaining the objective of a free and united India. Now that India is

[Dr. S. Radhakrishnan]

divided, it is our duty not to indulge in words of anger. They lead us nowhere. We must avoid passion. Passion and wisdom never go together. The body politic may be divided but the body historic lives on. (*Hear, hear.*) Political divisions, physical partitions, are external but the psychological divisions are deeper. The cultural cleavages are the more dangerous. We should not allow them to grow. What we should do is to preserve those cultural ties, those spiritual bonds which knit our peoples together into one organic whole. Patient consideration, slow process of education, adjustment to one another's needs, the discovery of points of view which are common to both the dominions in the matter of Communications, Defence, Foreign Affairs, these are the things which should be allowed to grow in the daily business of life and administration. It is by developing such attitudes that we can once again draw near and gain the lost unity of this country. That is the only way to it.

Our opportunities are great but let me warn you that when power outstrips ability, we will fall on evil days. We should develop competence and ability which would help us to utilise the opportunities which are now open to us. From tomorrow morning—from midnight today—we cannot throw the blame on the Britisher. We have to assume the responsibility ourselves for what we do. A free India will be judged by the way in which it will serve the interests of the common man in the matter of food, clothing, shelter and the social services. Unless we destroy corruption in high places, root out every trace of nepotism, love of power, profiteering and blackmarketing which have spoiled the good name of this great country in recent times, we will not be able to raise the standards of efficiency in administration as well as in the production and distribution of the necessary goods of life.

Pandit Jawaharlal Nehru referred to the great contribution which this country will make to the promotion of world peace and the welfare of mankind. The *Chakra*, the Asokan wheel, which is there in the flag embodies for us a great idea. Asoka, the greatest of our emperors,—look at the words of H. G. Wells regarding him "Highnesses, Magnificences, Excellencies, Serenities, Majesties'—among them all, he shines alone, a star—Asoka the greatest of all monarchs." He cut into rock his message for the healing of discords. If there are differences, the way in which you can solve them is by promoting concord. Concord is the only way by which we can get rid of differences. There is no other method which is open to us.

Samavāya eva Sādhuh

We are lucky in having for our leader one who is a world citizen, who is essentially a humanist, who possesses a buoyant optimism and robust good sense in spite of the perversity of things and the hostility of human affairs. We see the way in which his Department interfered actively and in a timely manner in the Indonesian dispute. (*Loud applause.*) It shows that if India gains freedom, that freedom will be

used not merely for the well-being of India but for *Vishva Kalyana i.e.*, world peace, the welfare of mankind.

Our pledge tells us that this ancient land shall attain her rightful and honoured place. We take pride in the antiquity of this land for it is a land which has seen nearly four or five milleniums of history. It has passed through many vicissitudes and at the moment it stands, still responding to the thrill of the same great ideal. Civilisation is a thing of the spirit, it is not something external, solid and mechanical. It is the dream in the people's hearts. It is the inward aspiration of the people's souls. It is the imaginative interpretation of the human life and the perception of the mystery of human existence. That is what civilisation actually stands for. We should bear in mind these great ideals which have been transmitted to us across the ages. In this great time of our history we should bear ourselves humbly before God, brace ourselves to this supreme task which is confronting us and conduct ourselves in a manner that is worthy of the ageless spirit of India. If we do so I have no doubt that the future of this land will be as great as its once glorious past.

Sarvabhūtasthamātmānam
Sarvabhūtāni cātmani
Sampasyam ātmayājīvai
Sāārwjyam adhigachchati.

Swarajya is the development of that kind of tolerant attitude which sees in brother man the face Divine. Intolerance has been the greatest enemy of our progress. Tolerance of one another's views, thoughts and beliefs is the only remedy that we can possibly adopt. Therefore, I support with very great pleasure this Resolution which asks us as the representatives of the people of India to conduct ourselves in all humility, in the service of our country and the word 'Humility' here means that we are by ourselves very insignificant. Our efforts by themselves cannot carry us to a long distance. We should make ourselves dependent on that other than ourselves which makes for righteousness. The note of humility means the unimportance of the individual and the supreme importance of the unfolding purpose which we are called upon to serve. So in a mood of humility, in a spirit of dedication let us take this pledge as soon as the clock strikes 12.

Mr. President: I will now put the Resolution to the vote. I shall read it first:—

"Resolved that—

(1) After the last stroke of midnight, all members of the Constituent Assembly present on the occasion do take the following pledge:—

> 'At this solemn moment when the people of India through suffering and sacrifice, have secured freedom and become masters of their own destiny, I,.....a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind;'

(2) members who are not present on this occasion do take the pledge (with such verbal changes as the President may prescribe) at the time they next attend a session of the Assembly."

Mr. H. V. Kamath (C. P. & Berar: General): Mr. President, there are two amendments standing in my name, but since you have invoked the holy name of God in your address and incorporated the spirit of it in the pledge by modifying it slightly in the form in which it has come before us, and above all, since the zero hour is fast approaching, I do not propose to move my amendments.

Mr. President: Thank you. I will put the Resolution to vote. Members will please express their assent by saying 'Aye'.

The motion was adopted.

Mr. President: We have just resolved that as the clock strikes 12, we shall take the pledge. In taking the pledge, I shall read it out sentence by sentence in our own language first and I shall expect those members who know that language to repeat it sentence by sentence. Then I will read it out also sentence by sentence in English and I shall expect the members to repeat it sentence by sentence. Members will please stand when the pledge is taken, but other visitors will remain seated. It is just half a minute to 12. I am expecting the clock to strike 12.

As the clock struck twelve (mid-night), Mr. President and all the Members stood up and took the pledge as below, Mr. President reading it out sentence by sentence and the Members repeating it after him in Hindustani and in English.

> *"At this solemn moment when the people of India, through suffering and sacrifice, have secured freedom, I,....., a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind."*

INTIMATION TO THE VICEROY ABOUT THE ASSUMPTION OF POWER BY THE CONSTITUENT ASSEMBLY AND THE ASSEMBLY'S ENDORSEMENT OF LORD MOUNTBATTEN'S APPOINTMENT AS GOVERNOR-GENERAL OF INDIA.

Mr. President: I propose that it should be intimated to the Viceroy that—

(1) the Constituent Assembly of India has assumed power for the goveranance of India, and

(2) the Constituent Assembly of India has endorsed the recommendation that Lord Mountbatten be Governor-General of India from the 15th August 1947.

and that this message be conveyed forthwith to Lord Mountbatten by the President and Pandit Jawaharlal Nehru.' (*Cheers.*) I take it the House approves it."

The motion was adopted.

Mr. President: Shrimati Hansa Mehta will now present the National Flag on behalf of the women of India. (*Cheers.*)

Mrs. Hansa Mehta (Bombay: General): Mr. President, Sir, in the absence of Shrimati Sarojini Naidu, it is my proud privilege, on behalf of the women* of India, to present this flag to the Nation through you.

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*MEMBERS OF THE FLAG PRESENTATION COMMITTEE

1. Sarojini Naidu.
2. Amrit Kaur.
3. Vijayalakshmi Pandit.
4. Hansa Mehta.
5. Ammu Swaminathan.
6. Sucheta Kripalani.
7. Kudsia Aizaz Rasool.
8. Durga Bai.
9. Renuka Ray.
10. Dadshayini Velayudhan.
11. Purnima Banerji.
12. Kamala Chaudhury.
13. Malati Chaudhary.
14. Abala Bose.
15. Lakshmi Bai Rajwade.
16. Maitreyi Bose.
17. Rameshwari Nehru.
18. Sherifa Hamid Ali.
19. Goshi Ben Captain.
20. Dhanavanti Rama Rao.
21. Anasuya Bai Kale.
22. Premleela Thackersy.
23. Mani Ben Patel.
24. Sarla Devi Sarabhai.
25. Avantikabai Gokhaley.
26. Sakine Lukmani.
27. Jankiben Bajaj.
28. Muthulakshmi Reddi.
29. Charulata Mukerji.
30. Rukmani Lakshmipathi.
31. Mithan Tata Lam.
32. Hannah Sen.
33. Aswah Hussain.
34. Radhabai Subbroyan.
35. Tarabhai Premchand.
36. Jethi Sipahimlani.
37. Ambuja Amma.
38. Janaki Amma.
39. Leelavathi Munshi.
40. Lavanya Prabha Dutt.
41. Sophia Wadia.
42. Mrinalini Chattopadhyay.
43. Sarada Ben Mehta.
44. Zarina Currimbhoy.
45. Prem Captain.
46. Hemaprabha Das Gupta.
47. Premavati Thappar.
48. Zora Ansari.
49. Jaishri Raiji.
50. Kitty Shiva Rao.
51. Shanoodevi.
52. Violet Alva.
53. Susheela Ilukusing.
54. Bina Das.
55. Uma Nehru.
56. Iravati Karve.
57. Raiban Tyabji.
58. Asha Aryanayakam.
59. Mridula Sarabhai.
60. Raksha Saran.
61. Margaret Cousins.
62. Kamaladevi.
63. Lakshmi Menon.
64. Lavanya Chanda.
65. Ayasha Ahmed.
66. Krishna Hutheesingh.
67. Rajan Nehru.
68. Indira Gandhi.
69. Suraya Tyabji.
70. Memubai.
71. Padmaja Naidu.
72. Kiran Bose.
73. Kusum Sayani.
74. Lajjavati Devi.

dom that we have attained. We have great traditions to maintain, traditions that made India so great in the past. It is the duty of every man and woman to preserve these traditions so that India may hold her spiritual supremacy over the world. May this flag be the symbol of that great India and may it ever fly high and serve as a light in the gloom that threatens the world to-day. May it bring happiness to those who live under its protecting care. (*Cheers.*)

I have a list* here of nearly a hundred prominent women of all communities who have expressed a desire to associate themselves with this ceremonial. There are hundreds and hundreds of other women who would equally like to participate in this function. It is in the fitness of things that this first flag that will fly over this august House should be a gift from the women of India. (*Cheers.*) We have donned the saffron colour, we have fought, suffered and sacrificed in the cause of our country's freedom. We have today attained our goal. In presenting this symbol of our freedom, we once more offer our services to the nation. We pledge ourselves to work for a great India, for building up a nation that will be a nation among nations. We pledge ourselves for working for a greater cause, to maintain the free-

Mr. President: I have, in anticipation of the consent of the House accepted with thanks a poem composed by His Excellency Dr. Chia Luen Lo, the Chinese Ambassador in India, on this occasion.

SINGING OF NATIONAL SONGS

Mr. President: The next item is the singing of the first few lines of *Sare Jahan se Achcha Hindustan Hamara* and the first verse of *Janaganamana Adhinayaka Jaya He.*

(Shrimati Sucheta Kripalani sang the first few lines of *Sare Jahan Se Achcha Hindustan Hamara* and the first verse of *Janaganamana Adhinayaka Jaya He.*)

Mr. President: The House will now adjourn for a few hours, till Ten of the Clock.

The Assembly then adjourned till Ten of the Clock on Friday, the 15th August 1947.

THE CONSTITUENT ASSEMBLY OF INDIA
Friday, the 15th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) entered the Hall along with their Excellencies Lord Mountbatten, Governor-General of India, and Lady Mountbatten.

MESSAGES

Mr. President: I shall read out certain messages which have been received.

1. Message from the Prime Minister of the United Kingdom.

My colleagues in the United Kingdom Government join with me in sending on this historic day greetings and good wishes to the Government and the people of India. It is our earnest wish that India may go forward in tranquillity and prosperity and in so doing contribute to the peace and prosperity of the world.

2. Message from His Grace the Archbishop of Canterbury.

At this time when India and Pakistan become independent Dominions and take upon themselves the full responsibilities of self-Government, on behalf of the Christian people of this country I send you my greetings and good wishes. In God's providence apparently insuperable difficulties have so far been overcome and all the travail of past ages has led up to this moment of fulfilment and hope. I pray that the two Dominions may go forward to a noble future ever growing in justice and peace, in brotherhood and prosperity.

3. Message from Generalisimo Chiang Kai-shek, President of the Republic of China.

On this auspicious occasion when the people of India celebrate the Dawn of a new era of freedom, I wish to convey to you and the people of India my warm congratulations on the glorious and monumental achievement in which you and Mahatma Gandhi have played such an eminent and noble part, and which, I am confident, will be a source of inspiration to all peoples striving for independence, equality and progress. Please accept my best wishes for India's bright and promising future of success and greatness.

4. Message from the Prime Minister of Canada.

It affords me much pleasure to extend to you, and through you to the Government and people of India, the most cordial wishes of the Government and people of Canada on the occasion of the establishment of India as a completely self-governing nation.

[Mr. President]

5. Message from the Prime Minister of Australia.

I desire to convey the greetings and good wishes of the Government and people of Australia to the Government and people of India on the historic occasion which is being celebrated on the 15th August.

The Australian people rejoice in your new status as a free and sovereign nation and warmly welcome your fellow membership in the British Commonwealth of Nations.

It is confidently anticipated that your traditions, your ancient culture and the spirit which is animating you in making smooth this period of transition, will ensure the future welfare and greatness of the people of India.

6. Message from the President of the Executive Yuan, Nanking.

On this historic occasion of India's attainment of her long cherished aspirations I take especial pleasure in extending to you and the Indian people my sincere felicitations. The Chinese people are deeply gratified by the rebirth of another great nation on the Asian continent. India and China with a common frontier of 2,000 miles have enjoyed the closest and most friendly relations in the course of many centuries. Our two nations having stood together through the late world war will undoubtedly continue to march forward together toward the common goal of world peace. I send you my warmest wishes for your continued success and for the happiness and prosperity of the Indian people.

7. Message from Dr. Soedarsono on behalf of the Republic of Indonesia.

On the eve of the establishment of the Dominion of India it is a great pleasure to the Republic of Indonesia to express her feelings of heartfelt joy, sympathy and friendship.

The Republic of Indonesia looks upon India as her Comrade who in time of danger and distress has helped her and will always help her. She may—as both their nationalism is based upon humanity—hope that in the very near future still tighter bonds will be welded, bonds of comradeship in the struggle for Justice and Peace and for the Freedom and Prosperity of millions who for so long a time have lived in squalor amidst luxury and wealth.

The people of India since years led by its eminent Leaders undoubtedly is approaching a better and happier future. India will not only become a land of Justice and Prosperity but at the same time a bulwark of and a guard for peace in Asia.

The Government and the People of the Republic of Indonesia send your People, your Government and your Excellency at this great historical moment their deeply felt wishes for Happiness and Prosperity.

8. Message from His Majesty's Minister in Nepal.

My staff join me in offering warmest congratulations on establishment of Dominion of India and send all good wishes for future happiness and prosperity of State and its people.

9. Message from the Prime Minister and Acting Minister of Foreign Affairs, Oslo.

On this Great Day of National Rejoicing for the Peoples of India I have the honour to transmit to you my very best wishes for the prosperity of your country.

ADDRESS OF H. E. THE GOVERNOR-GENERAL

Mr. President: May I invite your Excellency to address the House?

H. E. the Governor-General: Mr. President and members of the Constituent Assembly,

I have a message from His Majesty the King to deliver to you today. This is His Majesty's message:—

> "On this historic day when India takes her place as a free and independent Dominion in the British Commonwealth of Nations, I send you all my greetings and heartfelt wishes.
>
> Freedom loving people everywhere will wish to share in your celebrations, for with this transfer of power by consent comes the fulfilment of a great democratic ideal to which the British and Indian peoples alike are firmly dedicated. It is inspiring to think that all this has been achieved by means of peaceful change.
>
> Heavy responsibilities lie ahead of you, but when I consider the statesmanship you have already shown and the great sacrifices you have already made, I am confident that you will be worthy of your destiny.
>
> I pray that the blessings of the Almighty may rest upon you and that your leaders may continue to be guided with wisdom in the tasks before them. May the blessings of friendship, tolerance and peace inspire you in your relations with the nations of the world. Be assured always of my sympathy in all your efforts to promote the prosperity of your people and the general welfare of mankind."

It is barely six months ago that Mr. Attlee invited me to accept the appointment of last Viceroy. He made it clear that this would be no easy task—since His Majesty's Government in the United Kingdom had decided to transfer power to Indian hands by June 1948. At that time it seemed to many that His Majesty's Government had set a date far too early. How could this tremendous operation be completed in 15 months?

However, I had not been more than a week in India before I realised that this date of June 1948 for the transfer of power was too late rather than too early; communal tension and rioting had assumed proportions of which I had had no conception when I left England. It seemed to me that a decision had to be taken at the earliest possible moment unless there was to be risk of a general conflagration throughout the whole sub-continent.

I entered into discussions with the leaders of all the parties at once—and the result was the plan of June 3rd. Its acceptance has

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[H. E. the Governor-General]

been hailed as an example of fine statesmanship throughout the world. The plan was evolved at every stage by a process of open diplomacy with the leaders. Its success is chiefly attributable to them.

I believe that this system of open diplomacy was the only one suited to the situation in which the problems were so complex and the tension so high. I would here pay tribute to the wisdom, tolerance and friendly help of the leaders which have enabled the transfer of power to take place ten and a half months earlier than originally intended.

At the very meeting at which the plan of June 3rd was accepted, the Leaders agreed to discuss a paper which I had laid before them on the administrative consequences of partition; and then and there we set up the machinery which was to carry out one of the greatest administrative operations in history—the partition of a sub-continent of 400 million inhabitants and the transfer of power to two independent governments in less than two and a half months. My reason for hastening these processes was that, once the principle of division had been accepted, it was in the interest of all parties that it should be carried out with the utmost speed. We set a pace faster in fact than many at the time thought possible. To the Ministers and officials who have laboured day and night to produce this astonishing result, the greatest credit is due.

I know well that the rejoicing which the advent of freedom brings is tempered in your hearts by the sadness that it could not come to a united India; and that the pain of division has shorn today's events of some of its joy. In supporting your leaders in the difficult decision which they had to take, you have displayed as much magnanimity and realism as have those patriotic statesmen themselves.

These statesmen have placed me in their debt for ever by their sympathetic understanding of my position. They did not, for example, press their original request that I should be the Chairman of the Arbitral Tribunal. Again they agreed from the outset to release me from any responsibility whatsoever for the partition of the Punjab and Bengal. It was they who selected the personnel of the Boundary Commissions including the Chairman; it was they who drew up the terms of reference; it is they who shoulder the responsibility for implementing the award. You will appreciate that had they not done this, I would have been placed in an impossible position.

Let me now pass to the Indian States. The plan of June 3rd dealt almost exclusively with the problem of the transfer of power in British India; and the only reference to the States was a paragraph which recognised that on the transfer of power, all the Indian States—565 of them—would become independent. Here then was another gigantic problem and there was apprehension on all sides. But after the formation of the States Department it was possible for me, as Crown Representative, to tackle this great question. Thanks to that far-sighted statesman, Sardar Vallabhbhai Patel, Member in charge of the States Department, a scheme was produced which appeared to me to be equally in the interests of the States as of the Dominion of India. The overwhelming majority of States are geographically linked with India, and therefore this Dominion had by far the bigger stake in the solution of this problem. It is a great triumph for the realism and

sense of responsibility of the Rulers and the Governments of the States, as well as for the Government of India, that it was possible to produce an Instrument of Accession which was equally acceptable to both sides; and one, moreover, so simple and so straightforward that within less than three weeks practically all the States concerned had signed the Instrument of Accession and the Standstill Agreement. There is thus established a unified political structure covering over 300 million people and the major part of this great sub-continent.

The only State of the first importance that has not yet acceded is the premier State, Hyderabad.

Hyderabad occupies a unique position in view of its size, population and resources, and it has its special problems. The Nizam, while he does not propose to accede to the Dominion of Pakistan, has not up to the present felt able to accede to the Dominion of India. His Exalted Highness has, however, assured me of his wish to co-operate in the three essential subjects of External Affairs, Defence and Communications with that Dominion whose territories surround his State. With the assent of the Government, negotiations will be continued with the Nizam and I am hopeful that we shall reach a solution satisfactory to all.

From today I am your constitutional Governor-General and I would ask you to regard me as one of yourselves, devoted wholly to the furtherance of India's interests. I am honoured that you have endorsed the invitation originally made to me by your leaders to remain as your Governor-General. The only consideration I had in mind in accepting was that I might continue to be of some help to you in difficult days which lie immediately ahead. When discussing the Draft of the India Independence Act your leaders selected the 31st March 1948 as the end of what may be called the interim period. I propose to ask to be released in April. It is not that I fail to appreciate the honour of being invited to stay on in your service, but I feel that as soon as possible India should be at liberty, if you so wish, to have one of her own people as her Governor-General. Until then my wife and I will consider it a privilege to continue to work with and amongst you. No words can express our gratitude for the understanding and co-operation as well as the true sympathy and generosity of spirit which have been shown to us at all times.

I am glad to announce that "my" Government (as I am now constitutionally entitled and most proud to call them) have decided to mark this historic occasion by a generous programme of amnesty. The categories are as wide as could be consistent with the over-riding consideration of public morality and safety, and special account has been taken of political motives. This policy will also govern the release of military prisoners undergoing sentences as a result of trial by courts-martial.

The tasks before you are heavy. The war ended two years ago. In fact, it was on this very day two years ago that I was with that great friend of India, Mr. Attlee in his Cabinet Room when the news came through that Japan had surrendered. That was a moment for thankfulness and rejoicing, for it marked the end of six bitter years of destruction and slaughter. But in India we have achieved something

[H. E. the Governor-General]

greater—what has been well described as "A treaty of Peace without a War". Nevertheless, the ravages of the war are still apparent all over the world. India, which played such a valiant part, as I can personally testify from my experience in South-East Asia, has also had to pay her price in the dislocation of her economy and the casualties to her gallant fighting men with whom I was so proud to be associated. Preoccupations with the political problem retarded recovery. It is for you to ensure the happiness and ever-increasing prosperity of the people, to provide against future scarcities of food, cloth and essential commodities and to build up a balanced economy. The solution of these problems requires immediate and whole-hearted effort and far-sighted planning, but I feel confident that with your resources in men, material and leadership you will prove equal to the task.

What is happening in India is of far more than purely national interest. The emergence of a stable and prosperous state will be a factor of the greatest international importance for the peace of the world. Its social and economic development, as well as its strategic situation and its wealth of resources, invest with great significance the events that take place here. It is for this reason that not only Great Britain and the sister Dominions but all the great nations of the world will watch with sympathetic expectancy the fortunes of this country and will wish to it all prosperity and success.

At this historic moment, let us not forget all that India owes to Mahatma Gandhi—the architect of her freedom through non-violence. We miss his presence here today, and would have him know how much he is in our thoughts.

Mr. President, I would like you and our other colleagues of the late Interim Government to know how deeply I have appreciated your unfailing support and co-operation.

In your first Prime Minister, Pandit Jawaharlal Nehru, you have a world-renowned leader of courage and vision. (*Cheers.*) His trust and friendship have helped me beyond measure in my task. Under his able guidance, assisted by the colleagues whom he has selected, and with the loyal co-operation of the people, India will now attain a position of strength and influence and take her rightful place in the comity of nations. (*Loud and prolonged cheers.*)

Mr. President: *[Your Excellency and members of the Assembly. I request you to communicate to His Majesty the gratitude of this Assembly for the message he has very kindly sent to us today. With the knowledge that we will have his sympathy and kindness in the task that we are going to take in our hands today, we are confident that we will be able to accomplish it in a proper way. *

[Mr. President then delivered his speech in Hindustani, the full text of which is published in the Hindustani Edition of the Debates.]

[ ] English translation of Hindustani Speech.

ADDITIONAL MESSAGES

Mr. President: I have to announce that a message* of greetings and goodwill has also been received from the French Minister of Foreign Affairs, M. Giraud on behalf of the Government of France and on his own behalf. It is regretted that I do not have the text of the message with me, but it will be inscribed in the records of the Assembly along with the other messages which I have read today.

Your Excellency, may I request you to convey to His Majesty a message of loyal greetings from this House and of thanks for the gracious message which he has been good enough to send us? That message will serve as an inspiration in the great work on which we launch today and I have no doubt that we anticipate with great pleasure association with Great Britain of a different kind. I hope and trust that the interest and the sympathy and the kindness which have always inspired His Majesty will continue in favour of India and we shall be worthy of them.

10. Message from the French Minister of Foreign Affairs

From : Mons. Georges Bidault,
Minister for Foreign Affairs,
Paris.

To Pandit Jawaharlal Nehru.

In the name of my Government and in my own I salute the historic date which marks the final accession of India to the ranks of the World's great free nations devoted to the cause of peace and earnestly desirous of the prosperity of all the peoples of the world. I request Your Excellency to accept, on this occasion, the renewed assurances of my very high consideration and of my entire devotion to the cause of friendship between our two countries.

12. Message from the President of the United States of America.

AMERICAN EMBASSY,
NEW DELHI, INDIA.
August 15, 1947.

YOUR EXCELLENCY,

I have the honour to transmit to you the following message* from the President of the United States :

On this memorable occasion I extend to you, to Prime Minister Jawaharlal Nehru and to the people of the Dominion of India the sincere best wishes of the Government and the people of the United States of America. We welcome India's new and enhanced status in the world community of sovereign independent nations, assure the new Dominion of our continued friendship and good will, and reaffirm our confidence that India, dedicated to the cause of peace and to the advancement of all peoples, will take its place at the forefront of the nations of the world in the struggle to fashion a world Society founded in mutual trust and respect. India faces many grave problems, but its resources are vast, and I am confident that its people and leadership are equal to the tasks ahead. In the years to come the people of this great new nation will find the United States a constant friend. I

*English translation of Hindustani speech.

[Mr. President]

earnestly hope that our friendship will in the future, as in the past, continue to be expressed in close and fruitful co-operation in international undertakings and in cordiality in our relations one with the other.

I wish to avail myself of this opportunity of extending my personal congratulations to Your Excellency on your assumption of the post of Governor-General of the Dominion of India and at the same time to convey assurance of my highest consideration.

HENRY T. GRADY.

His Excellency,
Governor-General of the Dominion of India.

Mr. President: Let us in this momentous hour of our history, when we are assuming power for the governance of our country, recall in grateful remembrance the services and sacrifices of all those who laboured and suffered for the achievement of the independence we are attaining today. Let us on this historic occasion pay our homage to the maker of our modern history, Mahatma Gandhi, who has inspired and guided us through all these years of trial and travail and who in spite of the weight of years is still working in his own way to complete what is left yet unaccomplished.

Let us gratefully acknowledge that while our achivement is in no small measure due to our own sufferings and sacrifices, it is also the result of world forces and events and last though not least it is the consummation and fulfilment of the historic traditions and democratic ideals of the British race whose farsighted leaders and statesmen saw the vision and gave the pledges which are being redeemed today. We are happy to have in our midst as a representative of that race Viscount Mountbatten of Burma and his consort who have worked hard and played such an important part in bringing this about during the closing scenes of this drama. The period of domination by Britain over India ends today and our relationship with Britain is henceforward going to rest on a basis of equality, of mutual good will and mutual profit.

It is undoubtedly a day of rejoicing. But there is only one thought which mars and detracts from the fulness of this happy event. India, which was made by God and Nature to be one, which culture and tradition and history of millenniums have made one, is divided today and many there are on the other side of the boundary who would much rather be on this side. To them we send a word of cheer and assurance and ask them not to give way to panic or despair but to live with faith and courage in peace with their neighbours and fulfil the duties of loyal citizenship and thus win their rightful place. We send our greetings to the new Dominion which is being established today there and wish it the best luck in its great work of governing that region and making all its citizens happy and prosperous. We feel assured that they all will be treated fairly and justly without any distinction or discrimination. Let us hope and pray that the day will come when even those who have insisted upon and brought about this division will realise India's essential oneness and we shall be united once again We must realise however that this can be brought about not by force but by large heartedness and co-operation and by so

managing our affairs on this side as to attact those who have parted. It may appear to be a dream but it is no more fantastic a dream than that of those who wanted a division and may well be realised even sooner than we dare hope for today.

More than a day of rejoicing it is a day of dedication for all of us to build the India of our dreams. Let us turn our eyes away from the past and fix our gaze on the future. We have no quarrel with other nations and countries and let us hope no one will pick a quarrel with us. By history and tradition we are a peaceful people and India wants to be at peace with the world. India's Empire outside her own borders has been of a different kind from all other Empires. India's conquests have been the conquests of spirit which did not impose heavy chains of slavery, whether of iron or of gold, on others but tied other lands and other peoples to her with the more enduring ties of golden silk-of culture and civilisation, of religion and knowledge (gyan). We shall follow that same tradition and shall have no ambition save that of contributing our little mite to the building of peace and freedom in a war-distracted world by holding aloft the banner under which we have marched to victory and placing in a practical manner in the hands of the world the great weapon of Non-violence which has achieved this unique result. India has a great part to play. There is something in her life and culture which has enabled her to survive the onslaughts of time and today we witness a new birth full of promise, if only we prove ourselves true to our ideals.

Let us resolve to create conditions in this country when every individual will be free and provided with the wherewithal to develop and rise to his fullest stature, when poverty and squalor and ignorance and ill-health will have vanished, when the distinction between high and low, between rich and poor, will have disappeared, when religion will not only be professed and preached and practised freely but will have become a cementing force for binding man to man and not serve as a disturbing and disrupting force dividing and separating, when untouchability will have been forgotten like an unpleasant night dream, when exploitation of man by man will have ceased, when facilities and special arrangements will have been provided for the *adimjatis* of India and for all others who are backward, to enable them to catch up to others and when this land will have not only enough food to feed its teeming millions but will once again have become a land flowing with rivers of milk, when men and women will be laughing and working for all they are worth in fields and factories, when every cottage and hamlet will be humming with the sweet music of village handicrafts and maids will be busy with them and signing to their tune—when the sun and the moon will be shining on happy homes and loving faces.

To bring all this about we need all the idealism and sacrifice, all the intelligence and diligence, all the determination and the power of organisation that we can muster. We have many parties and groups with differing ideals and ideologies. They are all trying to convert the country to their own ideologies and to mould the constitution and the administration to suit their own view point. While they have the right to do so, the country and the nation have the right to demand loyalty from them. All must realise that what is needed most today

[Mr. President]

is a great constructive effort—not strife, hard solid work—not argumentation, and let us hope that all will be prepared to make their contribution. We want the peasant ot grow more food, we want the workers to produce more goods, we want our industrialists to use their intelligence, tact and resourcefulness for the common good. To all we must assure conditions of decent and healthy life and opportunities for self-improvement and self-realisation.

Not only have the people to dedicate themselves to this great task that lies ahead but those who have so far been playing the role of rulers and regulators of the lives of our men and women have to assume the role of servants. Our army has won undying glory in distant lands for its bravery and great fighting qualities. Our soldiers, sailors and airmen have to realise that they now form a national army on whom devolves the duty not only of defending the freedom which we have won but also to help in a constructive way in building up a new life. There is no place in the armed forces of our country which is not open to our people, and what is more they are required to take the highest places as soon as they can so that they may take full charge of our defences. Our public servants in various departments of Government have to shed their role as rulers and have to become true servants of the people that their compeers are in all free countries. The people and the Government on their side have to give them their trust and assure them conditions of service in keeping with the lives of the people in whose midst they have to live and serve.

We welcome the Indian States which have acceded to India and to their people we offer our hands of comradeship. To the princes and the rulers of the States we say that we have no designs against them. We trust they will follow the example of the King of England and become constitutional rulers. They would do well to take as their model the British monarchical system which has stood the shock of two successive world wars when so many other monarchies in Europe have toppled down.

To Indians settled abroad in British Colonies and elsewhere we send our good wishes and assurance of our abiding interest in their welfare. To our minorities we give the assurance that they will receive fair and just treatment and their rights will be respected and protected.

One of the great tasks which we have in hand is to complete the constitution under which not only will freedom and liberty be assured to each and all but which will enable us to achieve and attain and enjoy its fulfilment and its fruits. We must accomplish this task as soon as possible so that we may begin to live and work under a constitution of our own making, of which we may all be proud, and which it may become our pride and privilege to defend and to preserve to the lasting good of our people and for the service of mankind. In framing that constitution we shall naturally draw upon the experience and knowledge of other countries and nations no less than on our own traditions and surroundings and may have at times to disregard the lines drawn by recent history and lay down new boundary lines not only of Provinces but also of distribution of powers and functions. Our ideal is to have a constitution that will enable the people's will to

be expressed and enforced and that will not only secure liberty to the individual but also reconcile and make that liberty subservient to the common good.

We have up to now been taking a pledge to achieve freedom and to undergo all sufferings and sacrifices for it. Time has come when we have to take a pledge of another kind. Let no one imagine that the time for work and sacrifice is gone and the time for enjoying the fruits thereof has come. Let us realise that the demand on our enthusiasm and capacity for unselfish work in the future will be as great as, if not greater than, what it has ever been before. We have, therefore, to dedicate ourselves once again to the great cause that beckons us. The task is great, the times are propitious. Let us pray that we may have the strength, the wisdom and the courage to fulfil it.

HOISTING OF THE NATIONAL FLAG

Mr. President: His Excellency will now give the signal for hoisting the Flag.

(*The sound of a gun being fired was heard.*)

H. E. The Governor-General: That is the signal for hoisting the flag over this roof.

Mr. President: The House now stands adjourned till 10 of the Clock on the 20th.

Honourable Members: *Mahatma Gandhi ki jai.*

Mahatma Gandhi ki jai.

Pandit Jawaharlal Nehru ki jai.

Lord Mountbatten ki jai.

The Assembly then adjourned till 10 of the Clock on Wednesday, the 20th August 1947.

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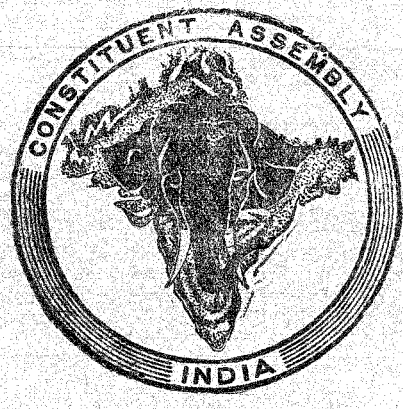

Wednesday
20th August
1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 20th August 1947

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

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following members presented their credentials and signed their names in the Register :

(1) The Honourable Srijut Gopinath Bardoloi (Assam : General).

(2) The Honourable Rev. J. J. M. Nichols-Roy (Assam : General).

(3) Prof. Nibaran Chandra Laskar (Assam : General).

(4) Shri A. B. Latthe (Kolhapur State).

(5) Chaudhri Nihal Singh Taxak (Punjab States Group 3).

Shrijut Rohini Kumar Chaudhury (Assam : General) : There are members here who were absent on the 14th night and therefore did not take the oath on that day.

Mr. President : We will come to that.

Members will recollect that on the night of the 14th the Assembly passed a resolution requiring that the Members of the Assembly should take the pledge in the prescribed form. Those members who were present that night took the pledge but I take it that there were some absentees that night. Certainly there are some members who have joined the Assembly today. All such members who have not yet taken the pledge may do so now at this stage.

TAKING THE PLEDGE

Mr. President : Those who have not taken the pledge will kindly stand up in their places.

(Those who did not take the pledge before stood up in their seats.)

Mr. President : I will read the pledge and I will ask the Members to repeat the pledge as I read.

(The President then read the pledge in English and in Hindustani and the Members who had not already done so, took the pledge as follows.

"*Now that the people of India, through suffering and sacrifice, have secured freedom, I,*——————————————, *a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind.*")

INCIDENTS CONNECTED WITH THE FLAG HOISTING CEREMONY IN CERTAIN PARTS OF INDIA

Mr. R. K. Sidhwa (C. P. & Berar: General): Before we begin with the proceedings of the day, I would like to draw your attention to a very important subject of urgent public importance and that is this. On the Independence day, it has been reported that at the Agra Fort lakhs and lakhs of people had collected to witness the Flag Hoisting Ceremony. It is further reported that at the instance of some British Command a British officer stated that he would not allow any troops to participate in the ceremony if the Union Jack is to be hauled down and the new flag is to be hoisted. All the people were very much disappointed, but one of the Members of the Indian troop hoisted our Indian Union Flag and pacified the audience. I would like to know from the Honourable the Leader of the House as to how far this is correct and if it is correct what steps he intends to take in this very important matter *i.e.*, wherever the National Flag has been insulted by a British officer. I would also cite one more instance. It has also been reported that in the Indian Post Office in the Hyderabad State our Flag was hoisted and the Hyderabad authorities pulled it down. I would like to know also from the Honourable the Leader of the House as to how far that is correct and if it is correct what steps he intends to take to protect and to preserve our National Flag which was hoisted on the property of the Government of India. Whatever the mighty Independent Nizam's Government may be—what steps is this Central Government going to take in this matter? We cannot tolerate any kind of insult to our National Flag by anybody. I would therefore request you kindly to request the Honourable the Leader of the House to make a statement.

Shri Balkrishna Sharma (United Provinces: General): Sir before you call upon the Leader of the House to explain the conduct of certain of the officials, I would also like to bring to your notice that about three or four days before the actual ceremony was to take place, I brought to the notice of the Honourable Sardar Baldev Singh, the Honourable Pandit Jawaharlal Nehru and the Honourable Sardar Vallbhabhai Patel two orders from two Military officers which were issued in Cawnpore; one was from Col. Hillman who is in charge of the C. O. D. at Cawnpore; and another was from another Military officer in charge of the Technical Branch, in which it was stated definitely that should orders be received to haul down the Union Jack and to replace it by any other flag then no ceremony will take place. Further, it was stated that if the Military personnel are invited by the Civil authorities to participate in any such functions, none of them shall do so and this order was at the instance of the U. P. Area Comand. I do not know what that means; perhaps the U. P. Command which governs all the Military movements and the Military forces in the United Provinces. Now the Indian personnel of the C. O. D. and the technical staff approached us, the Congress Committee people in Cawnpore, and they brought to our notice these orders. I requested the Honourable the Prime Minister of India and also the Honourable the Prime Minister of the United Provinces to take note of it. I am further informed by my Honourable friend Shri

Krishna Dutt Paliwal that in Agra also no flag was hoisted and only the Indian personnel tried to hoist the flag even in spite of these orders, but I do not know whether they succeeded or not. In Jhansi, Cawnpore and Agra, in all the military stations, at least in my province such orders were issued and I would naturally like to know whether these orders were brought to the notice of the Central Government.

Mr. President: May I point out that we have met here to day for the purpose of proceeding with the framing of the Constitution? We are not yet sitting here as the Legislative Assembly of India, where questions like this and many other important questions could properly be raised. So I would request Members to reserve them till the time when we meet as the Legislative Assembly and not to raise them in the Constituent Assembly because here we are concerned only with the framing of the Constitution and not with the actual administration from day to day. Of course, I am not quite clear in my own mind as yet as to the distinction between the Legislative Assembly and the Constituent Assembly and where the line has to be drawn, but this meeting has been convened especially for the purpose of dealing with the constitution making aspect of it and so we are now carrying on that function.

Shri Balkrishna Sharma: While fully bound by your ruling, may I point out that it is the Constituent Assembly of India which has taken over the reins of the Government. It is we as Constituent Assembly who have taken over from the British Government the governance of our country and therefore I think, Sir, that we are entitled to raise such questions from time to time even in the Constituent Assembly, even though we may not be meeting as the Central Legislature of the Union of India.

Mr. President: The Leader of the House was not aware that questions like this would be raised at this stage and so he is not here just at the present moment.

An Honourable Member: He is here.

Mr. President: I am sorry. He was not in his place here. I used to see him in another part of the House. I do not know if he would like to say anything on these matters at this stage.

Seth Govindas (C. P. & Berar: General): * [Mr. President, before the Prime Minister says anything, I would like to bring to your notice an occurrence at Jubbulpore.

Jubbulpore is an important military centre. There was a military parade and the flag was also hoisted over all public buildings and other prominent private ones. The flag was hoisted over military buildings without any celebrations as were made on non-military public buildings. A report was current that orders had been received from the Central Government that the flag should be hoisted over military buildings without any celebrations, pomp or show. There were some offices in the military area where the employees were told that the flags could not be hoisted over their buildings.

In this connection, I would like to know if there were different orders for military and non-military offices or if the orders were the same, and that whatever was done in Jubbulpore was done by the military officers at their own discretion.] *

*[ ] *English translation of Hindustani speech.

Mr. Hussain Imam (Bihar: Muslim): Mr. President, may I just intervene for a moment. The question that has been raised is of great importance, as to whether this Assembly is functioning only as the Constituent Assembly or also as the legislative authority. Up to the 14th, we were debarred from discussing anything which could be called as legislative functions. But, since that midnight, having assumed the whole power of governance of India, it is right and proper that some opportunity should be given to the members of this House to move adjournment motions and to discuss matters of urgent public importance. I do not think that we should embark on the full scope of the legislative body, having one hour for questions and the rest for other legislative functions. That would be really taking away too much of the time from constitution making and delaying the work which is in hand. But the right to move an adjournment motion is a very important and fundamental right which is a safeguard for democracy which we must preserve, and very much like to have in these days. I therefore suggest that the Honourable the President may adopt the rules of the Legislative Assembly regarding adjournment motions so that if and when necessary matters of urgent public importance may be ventilated before this House.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. President, Sir, the point raised by my honourable friends Mr. Sidhwa and Mr. Balkrishna Sharma cannot be lightly brushed aside. I quite appreciate the observations that have fallen from the Chair. It is indeed difficult to say just now whether we are functioning here in a dual capacity as members of the Indian Constituent Assembly and also as members of the Parliament of the Indian Dominion. Whatever it may be, the fact remains that while sitting as members of the Indian Constituent Assembly, there are bound to arise questions from time to time which are of such pressing importance and they cannot possibly be deferred for consideration to a time when we will assume the functions of the Dominion Parliament. As a matter of fact, we do not know even now when the time is going to come when we will be functioning as a purely Dominion Parliament and not as the Constituent Assembly. No rules have been framed and we have not been given any indication whether before we finish constitution making we can at all function as the Legislative Assembly or Dominion Parliament. Therefore, so long as we do not know when we shall be able to function as the legislative body, certainly opportunities ought to be afforded to us for ventilation of such important matters as have been brought before the House.

With regard to the merits of the matter, Sir, though it relates to purely executive function, the House will bear in mind that the Flag Hoisting ceremony, the adoption of the Indian National Flag, were made with unanimous approval on the floor of this House, and that the Flag Hoisting ceremony was a public ceremony made under the auspices of the Indian Dominion Government. Therefore, the question of infringement or violation of such orders of the Indian Government as reported by my honourable friends Mr. Sidhwa and Mr. Balkrishna Sharma and as reported in the Press is certainly a matter which must be ventilated. Sir, though it may not be possible just now to raise an adjournment

motion as it is definitely barred by the rules of procedure of the Constituent Assembly, certainly some rules may be made or some convention created till the time we function as the legislative body, for the ventilation and discussion of such matters as have been brought before the House. I quite share your feeling, Sir, that we are still hazy and not definite and clear as to the exact line of demarcation, the line that has to be drawn between us as members of the Constituent Assembly and as members of the Indian Dominion Parliament. But before such time, before that can be done by rules, at least it is necessary to create some convention for this period.

The Honourable the Premier of India may be requested to make a statement and explain the facts and also the nature of the action he contemplates to take. For the time being, if he makes a statement, we would be satisfied. We do not think that a full-fledged adjournment motion need be raised and debated. But, apart from that, we are definitely of opinion that on such an important matter, the honourable the Premier of India should make a statement which would satisfy us. That is all, I have to say on this important point.

Shri Mahavir Tyagi (United Provinces: General): On a point of order, Sir.

Mr. H. V. Kamath (C. P. & Berar: General): Sir, will you be so good as to tell us when we shall assemble here purely and solely as the Dominion Legislature?

Shri Mahavir Tyagi: Sir, the point of order which I wish to raise is that we cannot work both as the Constituent Assembly and the Legislature of the country, together. It will be very anomalous, Sir, because, in all matters of parliamentary routine, we may have to discuss Government policy and naturally when the Government policy is discussed, a Speaker is needed who is neutral and who is not a member of the Government. In the Constituent Assembly, we do not sit as Government, or officials or non-officials; but we sit all as individuals contributing their best towards the making of the constitution and you preside over our deliberations. If we begin to discuss censure motions and adjournment motions as my honourable friend on the other side has just suggested, we shall have to sit separately in blocks or parties and so many difficulties will arise. We shall have to vote with our parties, and naturally we shall have to divide ourselves into so many disciplined parties. So, the regular routine will all be upset. My suggestion therefore is, if we have to perform both the functions simultaneously, we cannot do all that on the same day, on one fixed day or in one fixed place. We shall have to divide the time and have a time-table. We shall have to announce that on such and such a day we sit as the Constituent Assembly so that we can sit under your Presidentship and carry on business as we have been doing till now. Similarly if we sit as the Dominion Parliament, we should announce our intention, and sit in party blocks and remain loyal to our parties and support the party motions or oppose the opposite ones, while in this case, it is not necessary for us to support motions proposed by the Ministers or others. My submission, therefore, is that we cannot work in the same House under the same Presidentship both as the Constituent Assembly and also as the Parliament of the country.

Mr. President: Mr. Santhanam.

Pandit Hirday Nath Kunzru (United Provinces : General): Mr. President, an honourable member of this House has raised a point of order.

Shri K. Santhanam: (Madras : General): I am speaking on the point of order.

Pandit Hirday Nath Kunzru: I submit that that point must be decided before any member is allowed to speak.

Shri K. Santhanam: I am speaking on the point of order. There are two issues on this point. What is the status of this Assembly ? Having defined the status, it has to be determined as to how it should function. Now, it is argued that it has got a double status, one as the Constituent Assembly and the other as the legislature. My own view is that it has got only one status. This is the Constituent Assembly. According to the Indian Independence Act, it is stated that the powers of the legislature of the Dominion shall be exercisable in the first instance by the Constituent Assembly of the Dominion. It is this Assembly, one indivisible integral body which has to exercise the powers of the Dominion legislature. Therefore, there is no purpose, there is no meaning in dividing this House into two, consisting of the same members. I think it is illegal to say that this is a Constituent Assembly today and this is a legislature tomorrow. It is one body. For the sake of convenience, we may devote some time to one work and some to the other and we may, if necessary have two sets of rules. I do not think it is legitimate for anyone to raise the point that today this is not a legislature and therefore it cannot raise an issue and tomorrow it is only the legislature and therefore another issue cannot be raised. We must treat it as one body. A Committee may be set up to frame rules of procedure as to how to regulate both these functions. Therefore, I suggest that no premature decision or ruling should be given today as to the status of this body. It should be carefully considered by lawyers and we should not commit ourselves to anything which may lead to all kinds of difficulties.

Mr. Tajamul Husain (Bihar : Muslim): Now, Sir, we are here as members of the Constituent Assembly. No doubt we assumed powers as members of the Union Parliament on 15th August ; but we to-day were summoned by you to attend the session of the Constituent Assembly and not of the Union Parliament. We, Sir, are governed here by the Rules of Procedure and Standing Orders which were framed in this House. There is no other rule under which we are governed, and we are bound by these Rules. To-day we are meeting as members of the Constituent Assembly and not as members of Parliament—because if we had been meeting as Parliament, all the members of Indian Government should have been present here to-day—now supposing, Sir, a very urgent and important matter connected with public education is taken up, you would require the presence of the Member in charge of Education, but he cannot be here as he is not a member of the Constituent Assembly. Therefore I submit that though the matter under discussion is undoubtedly very important and some serious action has t

be taken by the Honourable the Prime Minister of India, we are absolutely powerless under our Rules to discuss this matter. Therefore my point of order is that we are meeting today as members of the Constituent Assembly and as such we are bound by our own Rules and we cannot discuss the matter which has been raised.

Shri R. V. Dhulekar (United Provinces : General) : *[Mr. President, I do not agree with the point of order that has been raised. Since August 15, this Constituent Assembly has assumed full powers. It has no longer a dual aspect. Before August 15, this body was a Constituent Assembly and at that time, it could be said that it had no powerf of legislation or of making changes in the country's administrative functions. Since August 15, it has assumed full powers of administration including the power of framing the Constitution and we can perform those functions while sitting here at one place.

Another question has been raised and it is that on August 15, it was said that the next session of the Constituent Assembly would begin on the 20th. I would like to add that all powers have been vested in the Constituent Assembly. There is nothing outside it when we are in session, we can do anything and at any time. It is a different thing that for our convenience we may hold discussions on constitution from ten to one. After that, from three to five we may discuss administrative matters. We have full authority for both and legally there is nothing to prevent us from doing so. I think that the persons who say that there are legal restrictions in our way, go against the law. They should study the Act of Independence and should know that the administration is in our hands. We can also adjourn and leave Delhi for the present and may be recalled later after a month or two to functin as a legislature. Therefore, the point of order that has been moved is not right. There is only one comprehensive aspect of this Assembly and it includes framing of the constitution as well as the carrying on of the administration.]*

Shri T. Prakasam (Madras : General) : Sir, it is wrong to say that the status of this Soveregin body of the Constituent Assembly is one and indivisible. After 15th August this body became the Sovereign Body not only in regard to the framing of the constitution but also with regard to doing the work necessary as the Sovereign Legislature. Now, Si-, I have got a certain matter to be placed before the Sovereign Legislna ture which is closely connected with the framing of the Constitutios. According to me until those matters are settled in the Legislature, thi constitution-making also cannot be proceeded with. Therefore this House must have a dual capacity and whenever it is necessary, this House can convert itself into a Sovereign Legislature to consider one or two important questions without wasting time relating to framing the constitution itself and then again converting itself into a Constituent Assembly for framing the Constitution. That is the correct position and the constitutional position. Therefore it should not be considered as having an exclusive status, indivisible, and it should not continue framing the Constitution without caring for the other matters that may come here.

*[ ] *English translation of Hindustani speech.

Mr. President: I think we have had enough discussion on this point. There are two questions which have actually been raised, one with regard to the status of the Assembly as it is today and the other regarding the incidents which have taken place on the 14th/15th. I would now ask the Leader of the House to make any statement which he wishes to make on both the points or any of the points.

The Honourable Pandit Jawaharlal Nehru (United Provinces : General): Mr. President, Sir, I am not quite sure which of these two questions I am supposed to take first. I am suffering under a disadvantage. I have been trying to follow what has been said in this House very closely ; but roughly speaking I have heard about one-fourth of what has been said. I do not know whether the accoustics of this hall has changed or owing to our experiences of the last few days our voices have changed or something has happened. It is either a roar or whisper. I found it difficult to follow either the roar or the whisper.

If I may deal with the constitutional point that has been raised more or less as a layman than as an expert, it seems to me perfectly clear that this House is obviously a Sovereign body and can do just what it likes, admitting that the House does only things which it has itself decided to do. It can change its own decisions. It can change its own Rules but so long as the rules subsist, it follows its own rules. If it wants, it can change them. Therefore there is no doubt that this House has the right to carry on as a Legislative Assembly if it wants to from tomorrow or any time it likes but before doing so, it should come to that decision and frame its rules accordingly. I would therefore submit that the proper course for us to take is for the President to appoint a small committee which can report to us in two or three days time as to what rules we should have for this interim period. There is an obvious difficulty in our functioning as the Legislative Asembly as we are. For instance, questions may be asked and members of Government in charge of those portfolios will have to answer. Well Sir, you are yourself a Member of Government and if a question is asked in regard to the Department of Food or Agriculture, is the President supposed to reply or who is supposed to reply ?

A difficulty arises. A number of Ministers are not members of this House. They may, I think, even under the existing rules attend the House and speak without voting, but all these things will have to be gone into and clarified before we can really function as a Legislative Assembly. There is no doubt that we can make any rules we like. We can ask the Ministers to come and function as members of the House if we so choose. Therefore I beg to suggest that the President do appoint a Committee to report to us, say, within 3 days as to how we should function during this intervening period. We are meeting now obviously as the Constitutent Assembly, though we can meet otherwise also It is clear that if this Constituent Assembly as such had no work to do, supposing we had finished our preliminary work of laying down the principles of the Union Constitution a fortnight or three weeks ago, we would not be meeting today. We would have met on the 14th night and 15th morning for that particular purpose and adjourned till September

or October for the next session of the Constituent Assembly. We are meeting, therefore, because we had not finished our work a fortnight ago and we want to complete it in the next week or whatever time it may take, so that the real detailed constitution may be complete and then we may meet sometime in October, possibly, finally to pass that constitution ; so that at the present moment rather casually treating this as a Legislative Assembly will lead us into all manner of difficulties, but if the House so chooses, *i.e.*, in regard to information being supplied by Members of Government or anything else, naturally the Members of Government will be happy to supply it. The point is that everything should be done in a methodical way. So I submit, Sir, that the best course would be for you to appoint a Committee to report in two or three days as to what procedure we should follow and if necessary we can change our rules to that end.

Now, in regard to the questions put by some of the members, some of them I could not follow at all. Seth Govind Das said something and except for the fact that he said something about Jubbulpore, I did not at all follow what happened in Jubbulpore. I tried to follow him, but I am sorry, due probably to my own hearing I could not. So also another Member whom I could not easily follow. But briefly, I would say this, that obviously the Government in common with the House attaches the very greatest importance to the fact that the national flag should be honoured and that any dishonour to the flag anywhere must be enquired into and necessary steps taken. Two or three instances that were brought to notice regarding something that happened at Agra Fort are being enquired into. I believe the U. P. Government.....

Shri Balkrishna Sharma : May I know if the Hon'ble the Leader of the House received my telegrams about these very incidents ?

The Honourable Pandit Jawaharlal Nehru : I cannot say off-hand, because I have received 7000 telegrams in the last four or five days and it is a little difficult immediately to say whether I received the particular telegram. It is physically impossible for an individual or for a group of individuals to analyse them or even to read them quickly. We are doing it with all possible speed.

Now, we are enquiring from the U. P. Government regarding those incidents and I am sure our Defence Department is also enquiring and we shall take necessary steps.

As regards Jubbulpore, I know nothing. I shall be very happy if Seth Govind Das will supply me with the facts separately and we shall enquire into the matter and take the necessary steps.

An Honourable Member : What about Hyderabad ?

The Honourable Pandit Jawaharlal Nehru : About Hyderabad I understand that our States Department immediately enquired into this and the Hyderabad Government categorically denied any insult to the National Flag and they said that they had allowed it to be flown everywhere and certainly to their knowledge any such thing did not take place.

Mr. President: I think the question about the status and functioning of the Assembly is an important one and we have to take into consideration the rules which we have framed for the conduct of our business here as also the adaptations of the Government of India Act which have been made and the Independence Act. Taking all these things into consideration, we have to find out whether we can function either compartmentally in two compartments or we should function as one body. These are questions which require consideration and I think the suggestion which has been made by the Leader of the House that a small Sub-Committee should be appointed for the purpose of going into them and for making suggestions in regard to the rules which would guide us, is a suggestion which should be acceptable to the House and I would like to know if the House would like to have that done.

Honourable Members: Yes.

Mr. President: Since the House agrees, I shall announce the names of the members of the Sub-Committee in the course of the day and we shall ask the Committee to make a report as soon as possible.

Now, we shall proceed with our function as Constituent Assembly for which we have met this morning. I shall ask Mr. Gopalaswami Ayyangar to move his Resolution.

Shri Biswanath Das (Orissa: General): Arising out of this statement made by the Leader of the House, I rise to say just one thing, namely, regarding the terms of reference of the Committee which he has suggested. He was good enough to suggest that the reference to the Committee should be confined to matters of procedure.I feel that there are certain other questions which should also be referred to the Sub-Committee, namely, we have in this Constituent Assembly representatives of Moghalbandi (Provinces) as also of the States. Therefore, representatives of both these function side by side. Now, Sir, if only the question of procedure is to be referred to this Committee, there are certain difficulties regarding the functioning of the States representatives as also their voting. I will just, illustrate this point. For instance, we have to pass the Budget. So far as is known, the States have only conceded three subjects; I don't know if more subjects have been conceded to the Federation. If that is so, it is welcome, but as far as newspaper information goes,—we have had nothing from our leaders—they have conceded only three subjects. In regard to legislation relating to other subjects have they a right to discuss and vote? Now what is going to be the position of the States representatives in regard to other subjects which are beyond the scope of these three subjects?

In these circumstances, I would suggest to you and also to the Honourable Leader of the House to expand the reference—the terms of reference of this committee, so that the committee could put forward recommendations not only regarding procedure but also regarding the unctions and other allied matters so that we may have the whole picture before us.

Mr. President: I will keep that in mind in stating the terms reference of this committee.

Mr. H. V. Kamath : Sir, permit me to refer to a minor point. I would like to draw your attenttion to the fact that copies of neither your address on the 14th night nor the Governor-General's on the 15th morning, nor of your reply there-to, were placed on the Members' tables, and they have not been supplied to us even to this day. Will you please take action in this matter ?

Mr. President : Now, I think we shall proceed with the Report of the Union Powers Committee.

Shri Santanu Kumar Das (Orissa : General) : Sir, may I know through you and from the Leader of the House what steps have been taken by the Pakistan Government against those who have insulted the National Flag there in Pakistan ?

Mr. President : We shall now proceed with the Agenda. I think if there are any other questions, they may be considered at the proper time. Shri Gopalaswami Ayyangar.

REPORT OF THE UNION POWERS COMMITTEE—*contd.*

Mr. N. Gopalaswami Ayyangar (Madras : General) : Sir, I beg to move—

> That it be resolved that the Constituent Assembly do proceed to take into consideration the Second Report* on the scope of Union Powers submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 25th January, 1947.

Sir, copies of this Report have already been circulated to Hon'ble Members ; but, in placing this Report before the House, I would like to say a few words, first as to how this Report has come to be presented to the House.

The House will remember that as long ago as the 25th January, 1947, this Committee was brought into being by a motion moved by Mr. Rajagopalachari whom we are all proud to find now as the Governor of one of the most important provinces of this Dominion. Well, in that resolution—

Maulana Hasrat Mohani (United Provinces : Moslem) : Sir, on a point of order, I have given notice of an amendment that this Report may not be taken up for consideration.

Mr. President : Let the Resolution be moved first.

Mr. N. Gopalaswami Ayyangar : Sir, at the time this Resolution was adopted, what we were attempting to do was to implement the scheme in the Cabinet Mission Plan. That Plan, as the House will remember, provided for a federation of Provinces and States and the assignment of a certain limited number of subjects, broadly described, to the Federation, and for various other details as regards both the substance and the procedure which the leaders of the two great parties in the country had already accepted. Now, one of the important matters that had to be tackled by this House in connection with that plan was the scope of the subjects that were assigned to the Centre in that Plan. Those subjects

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*Appendix A.

[Mr. N. Gopalaswami Ayyangar]

were very broadly described, as I said. They consisted of Defence External Affairs and Communications, and the finance necessary for these subjects. Well, one of the items in that Plan which had been accepted was that constitutions had to be framed both for the Provinces and the Centre, the Federation, as also for any Groups, if the decision of the House was in favour of setting up such Groups. The constitutions for the provinces Groups were proposed to be made in the Sections into which this Assembly was to be divided after its preliminary meeting. Before the work of framing those constitutions was taken up it was considered necessary that some indication should be given as to the orbit,—if I may use the word—of the jurisdiction of the Centre, that is to say, the subjects which would be within the sphere of the Federation, so that the remaining subjects might be catered for in the Constitutions of the Provinces or of the Provinces and Groups, if Groups came to be decided on. It was for the purpose of implementing this object that it was decided that we should first undertake an investigation of the individual subjects which would fall within these four broad categories, and for that purpose we appointed a Committee to make this investigation and submit a report to the House. That Committee met, and on the 17th of April, I think, it made a report. That Report was presented to the House by me on the 28th April. In presenting it, I said I was not placing before the House any motion for the consideration of the Report because the conditions at that time were so fluid that we would only have wasted a considerable amount of the time of this House in considering that Report which was bound to become out-of-date within a few weeks. As a matter of fact, a very fateful political decision was impending at that time and we did not know what the nature of that decision was going to be, whether India was going to remain united or whether it was going to be divided and if so, what other details would have to be filled in. In those circumstances, I suggested that the House need not consider that first Report of this Committee at that time. I also pointed out that it would be necessary for the Committee to meet again and review the recommendations it had embodied in its first report in the light of political decisions that might be taken very soon after. As the House is aware, that decision was taken on the 3rd June and that decision started being implemented from almost that date; since then we have had the Indian Independence Act enacted by Parliament. Well, Sir, that Act has given us two Dominions in what was India, before the 15th of August.

We are now a Dominion. We have walked into independence. I deliberately say 'walked into independence' because I do not think we went and seized it. It was there. We walked in and said we had taken over power, and we have now in working order a constitution which is, if I may say so, a combination of the provisions of the Indian Independence Act and the provisions of the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act.

Sir, that is the present state of things. The Union Powers Committee met again after the 28th of April at a time when even the Indian Independence Bill had not been introduced in Parliament. We knew

of course that such a Bill was going to be introduced, but we were not quite sure at the time we settled our second report what the provisions of that Act would finally look like. Well, we did make that report. We have since had this Independence Act. What we have now is a Dominion and a Dominion if I may describe it—possibly it has been described so in the adaptations of the Government of India Act—I am not sure of it because we are yet to be supplied with copies of the *Gazette Extraordinary* which is supposed to have been issued on the 14th night or the 15th morning : but I take it, Sir, that that adaptation describes this Dominion as a Union comprising those Provinces of what was British India as have not seceded into the new Dominion of Pakistan. It comprises also those Indian States which have acceded to the Dominion. When I said Provinces, I should have referred to two kinds of provinces that we have in this country, namely, the Governors Provinces and the Chief Commissioners, Provinces. In addition to that, there may be other areas which may be included in the Dominion. Thus we have really a Federal Union now in this country, and that Federal Union will have to be administered in accordance with the provisions of the Indian Independence Act and the Government of India Act as modified. Now Sir, we, in this report of the Union Powers Committee, have nothing to do with the Federal Union which now exists. What we are attempting to establish is a Federation in the future, and, in considering what that Federation should be, we have got to take note of the essentials that any Federal Constitution has to provide for, and one of the essential principles of a Federal Constitution is that it must provide for a method of dividing sovereign powers so that the Government at the Centre and the Governments in the Units are each within a defined sphere, coordinate and independent. Perhaps I may quote for the information of the House the definition in orthodox terms of what a Federation should be as visualized by thinkers on political science, by people who have engaged themselves in the framing of Federal Constitutions. Here, for instance, is a description which I take from the Report of the Royal Commission on the Australian Constitution in 1929. For this definition the person responsible was Sir Robert Garran, a name very well known in the history of Federal Constitutions. He describes Federation as "a form of government in which sovereignty or political power is divided between the central and local governments so that each of them, within its own sphere, is independent of the other". I call this, Sir, an orthodox definition because, if we look round the world and look at the Federal constitutions that are actually in being, I am almost sure that not one of them will be found to conform rigidly to the actual terms of this definition. The line between the Centre and the Units is not so definitely fixed as this definition would assume. There are relations between the Centre and the Units. There are cases where the Units have to depend upon the Centre. There are controlling powers vested in the Federation in emergencies, when the Federation could override the jurisdiction of the Units and take over things into its own hands : so that this absolute independence of functioning, which is contemplated in the definition, has not been realised in practice. But there is one fact which stands out in the history of Federations, and that is this : it is necessary for us to demarcate the

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spheres within which the Centre on the one hand and the Units on the other could exercise sovereign powers, and that is really at the back of all the attempts that have been made in the various Federations to demarcate the subjects which should be assigned to the Centre and the subjects which should be assigned to the Units or retained by the Units, according to the view that is taken as to where residuary power should finally be lodged.

Now, Sir, with regard to our country, we are confronted with problems which have not confronted other Federations in history. We have decided to bring into a Federation areas which were under British sovereignty before the 15th of August, as also areas which were in theory independent but which were under the suzerainty of the British Crown. Now, to bring these two areas under one Federation confronts us with problems which the framers of Federal Constitutions elsewhere have not had to tackle ; and there is this further fact. Provinces have to be provided for under a scheme of government which is not monarchical. Indian States have to come into the Federation and to remain there under a monarchical form of government. But I am one of those who think that the substance of democratic government is not affected by a difference such as the one I have referred to, whether it is a monarchical form of government or it is a republican form of government.

What we are all wedded to in this House, so far as I can gauge the opinion of this House, is a Government which is responsible to the Legislature. That responsible government you can achieve under a monarchical system, as well as under a republican system. That being so, in essence, we can easily get over the superficial difficulties that are posed by the existence of these two systems in the two areas of this country and develop a Federal Constitution which would bring about a harmonious co-ordination of governmental activities in these two sets of reas.

Well Sir, in framing our Constitution we have kept this constantly in view. On this Committee connected with Union Powers we have kept the same principle constantly in view.

Now let me draw the attention of the House to one or two more peculiarities in the work that we are called upon to do. There is a certain amount of recognition which has been accorded to the principle of our making a difference between what were British Indian Provinces in the past and the Indian States, as regards the quantum of jurisdiction which we shall assign to the Centre. It has been taken as conceded that the States have to cede jurisdiction, have to accede to the Federation ; and while it is recognised that that accession should at least be in respect of a certain minimum number of subjects, accession with regard to the other Federal subjects has to be with their consent. I am glad to be able to say that the accredited Constitutional Advisers in Indian States have generally recognised, and also I think the representatives of the people of the Indian States have generally recognised the wisdom of agreeing, if possible, to a wider range of subjects to be assigned to the Centre than the subjects which could come within the four corners of Defence, External

Affairs and Communications. But the only thing I would appeal to the House to do is to carry our persuation of these Advisers to the point of their recognising that there is nothing in the Constitution that we shall be framing which could act as a discouragement to their implementing what I know they would be only too glad to implement if they were satisfied on the point I have mentioned.

Now, Sir, the fact that we have to make this distinction between the quantum of jurisdiction that is assigned to the Centre by the States on the one hand and to what were British Indian Provinces on the other, has materially affected the nature of the Report that this Committee has decided to present to this House. You will notice that there are three lists of subjects attached to the Report and they are described as the Federal List, the Provincial List and the Concurrent List. The Federal List is the only one with which the States are immediately concerned.

Now, there is another point of distinction to which I should draw attention. When we were merely trying to implement the Cabinet Mission Plan, we accepted the proposal of the Cabinet Mission that subjects not assigned to the Centre would be deemed to be assigned to the Provinces, and, in the case of the States, the language used was "Subjects not ceded by the States to the Federation would be retained by them". Now, in substance, it more or less amounted to the same thing, *viz.*, having listed out Federal subjects, what remained, *viz.*, the residuary subjects, would be with the Provinces in the one case and with the States in the other.

Now, Sir, when this Committee met after its first report had been presented, we were relieved of the shackles which we had imposed on ourselves on account of the acceptance of the Cabinet Mission Plan and the Committee came to the conclusion that we should make the Centre in this country as strong as possible consistent with leaving a fairly wide range of subjects to the Provinces in which they would have the utmost freedom to order things as they liked. In accordance with this view, a decision was taken that we should make three exhaustive Lists, one of the Federal subjects, another of the Provincial subjects and the third of the Concurrent subjects and that, if there was any residue left at all, if in the future any subject cropped up which could not be accommodated in one of these three Lists, then that subject should be deemed to remain with the Centre so far as the Provinces are concerned.

This decision, however, is not one which the Committee has applied to the States. You will find a reference to this in the Report. What is said there is that these residuary subjects will remain with the States unless the States are willing to cede them to the Centre. Well, I do not know if those who represent the States in this House will take any decision of the kind which perhaps the Committee hoped for when it said so; but we have got to take things as they are.

There is another matter which it is important that we should recognise. Residuary subjects in the case of provinces are subjects which are not accommodated in any of the three long Lists that we have appended to the Report. Residuary subjects in the case of the States would really mean all subjects which are not included in the Federal List. I

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want to draw attention to this, because I know my Hon'ble friend Dr. Ambedkar would rather see that the States accede also on certain items which are included in the Concurrent List, if not the whole of that list. There is a school of opinion in favour of that. But, as things stand now, the report stands today, all the subjects included in the Provincial list, all the subjects included in the Concurrent List, and whatever subjects may not be included in the federal list are with the States. That is a distinction which I think it is necessary for the House to remember in considering this report. Sir, so far as this report is concerned, there is one matter to which I should like to draw attention if only for the purpose of avoiding possible apprehensions as to whether certain things are included in it or excluded from it. The first report gave a list of subjects under each of these four heads. It also made certain recommendations as regards the inclusion of certain other provisions in the Constitution which may not be included in the lists themselves, for instance the last sentence of paragraph 2 (*a*) of the first report which referred to our making some provision so far as defence matters were concerned similar to the provisions contained in sections 102 and 126 (*a*) of the Government of India Act. Then, Sir, there is the penultimate sub-paragraph of para 2 (*d*) in which, in deference to the wishes of the representatives of States, it was decided by the Committee that the States should have a certain amount of time within which they could re-order their financial systems in such a way that they could be brought up to the standard of the rest of India and that provision is there and the second report does not cancel it.

Then, Sir, the second report itself draws attention to certain other matters, specific matters.....

Mr. H. V. Kamath: Mr. President, I submit that the loud speaker system is not behaving as well as it used to till the 15th.

Mr. President: It has caught the infection of being independent, we are going to have it checked up and put right.

Mr. N. Gopalaswami Ayyangar: Sir, what I wish to say is that though the motion is that the second report of this Committee be taken into consideration, I think, the House is entitled to take into consideration also those portions of the first report which are not in conflict with what is said in the second one. Sir, with regard to these, lists themselves, any person who superficially glances through these lists might probably get the impression that they are too long, particularly the federal lists which consist of 87 items. People have run away with the impression that this Committee has stolen a number of items from the provincial and concurrent lists and put them in the federal list and made it unduly long. I think if honourable members would scrutinise these lists and compare them with the lists in the Act of 1935 it would be difficult for them to find—perhaps with one or two stray exceptions any cases where we have encroached upon the sphere assigned to the provinces by that Act. There is also one other point that I wish to make so far as the federal list is concerned. We have cut up a number of items in the federal list into separate items and that is one reason why the number has increased so much. In other cases we have adopted certain items from other constitutions which we did not find

the Government of India Act, but none of are in the opinion of the Committee of such a character that they should necessarily go either in the provincial or concurrent list.

There is another matter in this connection to which perhaps I may refer. One of the headaches of the Indian Independence Act, I mean the headaches caused in this country by the Indian Independence Act, was the manner in which practically it encouraged the cutting of the political connection between the Government of India and the Governments of the Indian States. If that Act, or rather if that Bill had become law in the form in which it was originally framed, perhaps the disconnection would have been complete, but certain steps were taken in order to introduce into that Bill provisions which were intended to avert that calamity. But even so, what was put into the Act as enacted by Parliament, was not half of what was demanded from here with the full support of the statesman who is now the Governor-General of this Dominion. What we got was only a partial recognition of the point of view that was urged from here, and that only tried to maintain certain economic connections that exist between the Centre and the Indian States. It left the continuance of the political connection very much in the air. In fact, legally speaking it cut off that connection, unless some steps were taken to revise that connection by some means or other, and I may here say that, happily for this country, this revival of the connection has been brought about, and the result is that today we are in the Dominion of India under the Indian Independence Act in a much better position as regards this political connection than we were under the Act of 1935.

The overwhelming body of States coming within the geographical boundaries of the Indian Dominion have acceded to the Dominion. They have accepted the position that the Dominion can make laws in respect of the subjects on which they have acceded, a state of things which did not exist before the 15th of August. They have, most of them, I believe, sent representatives to the Constituent Assembly and this Constituent Assembly is going to function also as the Legislature of our Dominion, so that the political and the constitutional connection that exists today between the States and the Centre is much closer than it ever was during the last 150 years. I only say political and constitutional connection. I do not refer to the effectiveness of the control that was exercised over Indian States in the past. That may have been perhaps a little more efficient than may be possible under the existing state of things, but what I wish to draw particular attention to is that we have erected an organic political and constitutional structure which has commenced to function from the 15th of August. The credit for this I think, should primarily go to the great awakening of public opinion in the States. It should next go, I think, to the well considered policy of inviting the accession of Indian States to the Dominion which was announced by Sardar Vallabhbhai Patel who presides over the States Department today. But above all I should say that the actual accession of practically the overwhelming bulk of Indian States, the credit for that should go to the statesmanship and the genius for what he himself has called open diplomacy with which

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Lord Mountbatten has roped them in. I say this advisedly, because I think that but for the energy and the consummate skill which he has employed in this matter, we might not have reached the result which we are so happy to see today.

Now, Sir, I was mentioning this in order to point out that there are some rather hazy opinions as to what this accession means. It is said that the States have acceded only on three subjects. It is true there are three subjects, described in very broad terms but the actual Instrument of Accession which they have signed has detailed the items which come under each of these three heads and you will find that they really come to somewhere about 18 or 20. If we cut them up as in the list attached to the Union Powers Committee's Report, the number will probably be larger. The reason why I point out this particular fact is that representatives of States who are in this House are very substantially interested in the business which has got to be transacted here whether it is by way of constitution making or it is by way of legislation or control over central administration. They are vitally interested in this matter and I should like all of them to feel that there is absolutely no distinction between them and other representatives of India who are in this House. Now, Sir, having said that, I should finally refer to these three lists themselves, the first question I dare say which will exercise the minds of many Honourable Members here would be whether, after all, this kind of distinction as regards the lodgement of the residuary powers should continue. There are two ways of removing that distinction. One is perhaps to go back to the Cabinet Mission plan—in view of the fact that we have exhaustively described the subjects in the three lists-and lodge the residuary powers in the case of the Provinces also in those Provinces. The second proposition is one which the States might consider. Very eminent statesmen connected with the administration of Indian States have contended that what they wanted was a strong Centre and that if the Centre was made strong their hesitations about coming into the Constituent Assembly and participating in its labours would disappear. Well, if that view is concurred in by their colleagues here as also by the peoples' representatives from the Indian States, it is quite up to them to consider the alternative of modifying the report of this Committee and agreeing to the lodgement of residuary powers in the Centre itself. Well, Sir, that will be one of the things which this House will have very seriously to consider. The report of the Committee is, I must emphasize however in favour of residuary powers being with the States in the case of the States and with the Centre in the case of the Provinces. Sir, I do not wish to take up more of the time of the House. I move.

Maulana Hasrat Mohani: *[Mr. President. Before this, a mistake was committed by Sardar Patel, and I think, now, my friend Sir N. Gopalaswami is committing a greater blunder. He is an eminent jurist. But I would beg you to consider as to what course you are adopting now.

[Portions of this speech were made in English and portions in Hindustani]

At that time I asked Sardar Patel that he had not till then decided any principle about the centre nor had it been decided as to what type of Constitution the Union would have, whether it would be a Union of the dominion, or a republic ? If it is a republic then would it be socialist or nationalist? In short, you have not decided as to what shall be its shape. You have simply said that all the powers shall vest in the Center, and the Center shall probably assume all powers. I say that there can not be any greater blunder than this. It means that you consider that all the members here are fools. That is why I have raised this objection after full consideration. Replying to it, Pandit Nehru said that in the Resolution on objectives the word ' republic ' was present. Then I kept quiet but I wish to know what you are dreaming of now. Pandit Nehru should know that our British Imperialist friends have already bound you, and they will now keep you in their dominion and for that they have created a new device. And in creating it France, Holland, England, America and the last in the queue, Chaing-Kai-Shek—the worst of men—have combined together. It is this : They have invented a sort of a Republican Dominion. They are thrusting this Republican Dominion on Indonesia. Holland is thrusting this Republican Dominion on Indonesia. France is thrusting this Republican Dominion on Indo China, Viet-Nam. You have been made fools. They are going to thrust the same kind of Republican Indian Dominion on you and I am sure that you will have no escape from it. You will have to remain a dominion for ever. They are pastmasters in the art of jugglery of words and double dealing. They say one thing and mean quite another thing. Our Governor-General, Lord Mountbatten, has said that we have compelled all the Indian States to join the Indian Union. This appears a fine performance, that we have brought all the Indian States under our thumb. I say that you have not brought them under your control ; rather you have gone under their control. You will naturally ask, how ? It is like this : when you frame a Union Constitution, then what will happen ? Your reply will be that till now it is only Indian dominion. No doubt you have got it and also along with that the right of changing the constitution. Now you have to think, as to how the constitution shall be altered. Nothing can be passed unless three-fourths of the members agree to it. Those States, which shall now always be in the dominion, are almost one-third of the Union's strength. I ask you whether the representatives of the States, who have acceded to the Union, will also agree to change the Indian dominion into Socialist Republic ? If that is so, you are deceiving yourselves. You are deceiving your own conscience if you think that you can get out of this wretched Dominion Status. You have got one-third of your members belonging to the States and you have proposed that for changing the constitution, you will require a majority of three-fourths of the members of the Constituent Assembly. Don't you see that it will become impossible for you to change your constitution. You have condemned yourself to remain within the British Empire, in the British Commonwealth as a Dominion. Therefore, I say you have been made fools. I do not know how these friends of mine of the Congress High Command, who are my friends and co-workers, have come to accept this. Besides this, Pandit Nehru has said that the Resolution on objectives has been passed and now no one has got the

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right to say anything. I say that what he calls republic is not a real republic. It is that contemptible thing which the British Imperialists call by other names. Britishers have created the same thing in Indonesia. It is not hidden from anyone and therefore you should not commit the mistake, which Indonesians have committed.]*

Mr. M. S. Aney: (Deccan States): On a point of order, Sir. Can a member make a bi-lingual speech ?

Mr. President: I suppose that it is for the convenience of other members that he is interpreting himself partly in the English language.

Maulana Hasrat Mohani: *[Thank you, Sir. In this connection, I think it necessary to point out to you that the independence, which you have got, was already, christened as Dominion Status but they openly call it as an independent status. They never meant full independence. Who will be bigger fools than us, who knowing that we are being cheated, are celebrating our independence and are illuminating our houses ? I can't understand this ! As I am not given to oppose the opinion of the majority, I kept quiet then, but now, I say that real independence has not come to us. I have got eminent jurists and wisemen as my friends here but it seems that the vision of all is befogged and they seem to be in a dream. I was saying that members of the Congress High Command are my friends and have been my co-workers. I came here to this Constituent Assembly through the Muslim League, generally for the purpose of cooperating with my old friends. But now I find that they do not want my co-operation and they are rejecting my co-operation. There is no alternative left for me but to oppose them tooth and nail, and I oppose them on the ground that I have just explained that they have been made fools by these British Imperialists.

Another proof of the fact that you have been be fooled is that even such an enemy of Indian freedom as Mr. Churchill is, went out of his way and congratulated the Labour Government for having this thing passed. He said, " I do not mind whether this is only for a short time. It is quite sufficient for me that they have accepted for the time being to remain a Dominion." Mr. Churchill is clever enough, you know that. I am very sorry and it is very surprising that people of such keen intellect as my friend Mr. Rajagopalachari, Dr. Radhakrishnan and Dr. Ambedkar do not see this trick and this deception.

You have stated that you have agreed to take in these Indian States and you have taken one-third of your members from the States. You are going to make a provision that to change your constitution, to change from a Dominion to a socialist Republic, you will require a majority of three-fourths. This is obviously impossible. So long as these representatives of the States are part of your Assembly, of your Parliament, you cannot get out of this wretched thing—Dominion and Commonwealth. I wish to know, what has happened to you ? I could understand your demand for a strong Centre till Pakistan was not separated you apprehended trouble from the Muslim majority provinces, but not now when Pakistan has been separated.]*

* [ ]* Portions of this speach were made in Hindustani & portions in English

Mr. Mohammad Sharif: (Mysore State): May I request you to ask the gentleman to come to the point ?

Maulana Hasrat Mohani: †[Yes, I am speaking what objections I had to offer to Pandit Jawaharlal Nehru's previous Union Constitution Scheme, the same objection applies to this scheme also because these are identical. I maintain that the more natural and better thing would be to hand over all powers to the units, and then they may give all or these three subjects, *viz.* Defence, Foreign Affairs and Communications to the Centre, rather than handing over all powers to the Centre first which in its turn would delegate whatever powers it chooses to the unit. I don't believe in any Empire, Kings or Dominions or Commonwealth. We have had enough of these things. Now we will have none of them neither Emperor, nor Dictator nor Commonwealth nor Dominion. We will have [illegible]Union our ion of Socialist Republics, nothing less than that.

This is my general objection, but since you have included the States also, my objection becomes ten times stronger. What powers have you given to our provinces ? To my mind, you have curtailed their rights and powers which they had got even before independence. You have not increased them even by an iota. Rather you have curtailed them. But this depends on your sweet will as you have got the majority. It is but natural that all the members here are compelled to be bound by the Congress decisions. In fact, there should be no question of the Congress Party or the Muslim League Party as you have forsaken communalism. Justice demands that every member here should be told that they can live as members of political parties, and not as Hindus & Muslims.

What is the necessity for your having a strong centre vesting all powers in the centre only ? What is the ground and what is your objective ?

Sir, you see I have said all this as you have given no powers to the Provinces, and I pointed out this to you, for, you treat us as if all of us were fools.

Therefore I ask my friend Mr. Gopalaswami Ayyangar not to befool himself by saying that you want a strong Centre. I don't recognize that Centre. The only Centre that I will recognize will be that of our Union of Socialist Republics.] †

Mr. Tajmul Husain: I would like to know whether the Maulana wants a weak centre or a strong centre.

Mr. President: * [Maulana Sahib, you are at liberty to have your say on the motion you are moving *i.e.*, whether this resolution should be taken into consideration or not.] *

Maulana Hasrat Mohani: *[I say that you could have entertained this suspicion till Pakistan had not been separated.]*

Mr. President: Order, order. Maulana, you are really straying beyond the scope of the discussion. You have moved a Resolution that the consideration of the Report be adjourned. Now, you are going into the merits of the Report itself apart from that, you have brought in many other matters which have no relevence to your Resolution.

†[ ] †Portions of this speech were made in English and portions in Hindustani

*[ ] *English translation of Hindustani speech.

Maulana Hasrat Mohani : *[I would like to say that you have roped in the States with the bait that they would continue to exercise all powers of the Centre as before, except Defence, Foreign Affairs and Communications. I strongly object to this. He (Mr. Gopalaswami Ayyangar) thinks he is the only clever lawyer and everybody else is a fool.]*

Mr. President : Order, order. Maulana, I think you had better confine yourself to your own motion.

Maulana Hasrat Mohani : *[If this right has been given to them (the States) then at least similar or more rights should be given to the Provinces, otherwise this is all a fraud. Hence, unless you clarify the whole thing, it is all nonsense and needs no consideration.]*

Mr. President : The effect of the proposition which is now before the House is that the consideration of the report which has been moved by Mr. Gopalaswami Ayyangar be adjourned until a particular time which is mentioned in it. Members are now free to express themselves on that. I would ask members not to go into the merits of the Report itself at this stage because it is only a question of postponing the consideration ot the Report.

Shri Balkrishna Sharma : For my own information, Sir, I would like to know whether it is possible for any member to speak for or against a particular motion unless he tries to bring out the salient features of the Report and to say that in view of our not having completed the Union Constitution we should not proceed with it. That is my difficulty.

Mr. President : I think it is possible for members to confine themselves to the motion before the House. If they want to bring any ancillary points from the Report for arguing their case, I would not object to that, but I would not like the merits of the Report to be discussed at this stage.

Diwan Chaman Lall (East Punjab : General) : On a point of order, Sir. The motion before us is the one by Mr. Gopalaswami Ayyangar that the report be taken into consideration, to which an amendment has been moved by the Maulana. Are we to confine curselves to the terms of the amendment or are we going to discuss the original motion by Mr. Gopalaswami Ayyangar ?

Mr. President : I am taking only the amendment into consideration at the present moment, so that, when the amendment has been disposed of, we can go into the Resolution. If we go into the merits now, the discussion may get desultory ; therefore I want to concentrate on the amendment for adjourning the discussion.

Shri Mahavir Tyagi : On a point of order, Sir.

Mr. President : Point of Order on what ?

Shri Mahavir Tyagi : On the amendment which has been moved by Maulana Hasrat Mohani.

Mr. President : I have already given my ruling on that. The question under discussion is a motion of adjournment.

[ ] *Portions of this speech were made in English and the rest in Hindustani.

Shri. Mahavir Tyagi: But, Sir, I rise to ask for your ruling on this question, namely, that I feel that this amendment itself is out of order.

Mr. President: How ?

Shri Mahavir Tyagi: It is simply a negation of the original question before the House. Therefore, I submit that this amendment is out of order.

Mr. President: I don't think it is out of order, because it is a motion for adjourning the discussion of the original motion.

Mr. Himmat Singh K. Maheshwari (Sikkim and Cooch Behar: Group) Sir, I support the amendment, though for reasons somewhat different from those adduced by the revered Maulana Hasrat Mohani, but before I proceed to express my views, I would like to share with the House a Persian couplet which has come to my mind as result of hearing the speech of the venerable Maulana. The couplet runs as follows :—

زبان یار من ترکی ومن ترکی نمی دانم
چه خوش بودے اگر بودے زبانیش در دهان من

With your permission, Sir, I shall translate this couplet.

"*My beloved speaks Turkish.* (In this case Hindustani interpersed with English, not Hindi interspersed with Urdu). *It would be a good thing if his tongue had been within mine .*"

I only plead guilty to being unable to speak the brilliant Turkish which he spoke.

Coming to the subject, the Report of July 1947 which is before the House is in my opinion, already out of date for two reasons. The first reason is that the Indian Independence Act was passed after the Report had been drawn up, and the second reason is that towards the end of July certain decisions were taken by the Government of India and the States which led to the accession of a large number of States and to the execution by them of Instruments of Accession and Standstill Agreements. The Report before the House, Sir, does not take into account fully the changes that have been brought about since it was first written. Even as regards the subjects to be dealt with in the Federal Legislative List, an obvious difference has to be observed between the Provinces and and the States. The States have acceded in respect of three subjects only, while, as I understand it, the Provinces are willing to surrender to the Centre a number of other subjects for not only laying down the law or regulating the policy, but also for administration. The expenditure of the Centre on the three subjects in respect of which the Indian State acceded to the Dominion or are likely to accede to the Federation in the future, will cost, let us say, a certain amount. In addition the Centre will have to spend a large sum of money on other subjects for the benefit of the provinces alone. Therefore, Sir, the determination of the items of taxation which should be imposed in order to enable the Centre to meet its expenditure is a little premature. The Sates obviously are not to be made to pay for the expenditure on subjects in respect of which they do not get any benefit.

Shri Jaspat Roy Kapoor (United Provinces : General) : Sir, I understand the Honourable Speaker is a member of the Union Powers Committee and as such is it open to him to object to the consideration of the Report of the Committee of which he is a member ?

Mr. Himmat Singh K. Maheshwari: I am afraid I was not a member of that Committee.

Shri Jaspat Roy Kapoor : I am sorry.

Mr. Himmat Singh K. Maheshwari : The desire of this House, Sir, to create a strong Centre is a very legitimate desire ; but I fear it is sometimes forgotten that a strong Centre does not necessarily mean a weak Province or a weak State. In any case the States have enjoyed a much larger measure of autonomy in the past than the Provinces have and this distinction will, I am afraid, have to be maintained whether we like it or not. In para 3 of the Second Report now before us, it is stated that the application to States in general, of the Federal List of subjects in so far as it goes beyond the 16th May Statement may....

Mr. N. Gopalaswami Ayyangar : May I rise to a point of order? I thought you decided, Sir, that the present discussion should be confined to the adjournment motion.

Mr. Himmat Singh K. Maheshwari : I am only drawing the attention of the House to a very small point. The application to the States in general of the Federal List of subjects in so far as it goes beyond the 16th May Statement should be with their consent. It follows from this that in their case, the residuary powers would vest with them unless they consent to their vesting them with the Centre. In the Federal Legislative List before us, List I in the Appendix, there are included a number of items which do not strictly follow from the three subjects in respect of which the States intend to accede. The more logical course then, Sir, would be to split up the Federal Legislative List into two lists.

Mr. N. Gopalaswami Ayyangar : Are we going into the merits Sir ?

Mr. Himmat Singh K. Maheshwari : I am only stating the points, which will justify postponing consideration of the Report.

Mr. A. P. Pattani (Western India States) : Sir, the constitution cannot be drawn up unless these powers are first decided upon. The motion asks that these powers may be considered after the constitution has been drawn up. I submit the constitution cannot be drawn up unless these powers are decided upon.

Mr. Himmat Singh K. Maheshwari : Since the Federal Legislative List is likely to undergo a drastic revision and overhauling into two sections, one applicable to the Union and the other applicable to the Provinces only, it would be only proper for this House to agree to a postponement of the consideration of this Report.

I venture to suggest, also Sir, that in order that the Report may be considered afresh in the context of the vital changes that have taken place during the last four weeks, a wider committee may be appointed

by you, by the President, with a larger proportion of States, representatives with a view to re-examine the Report and to submit a further report within as brief a time as possible.

We have at present one further difficulty in considering this Report. There is the original report of April 1947, and there is also the second report of July 1947. Some portions of the April Report will hold good and some other portions will not. Members will find it very difficult to pick out the exact sentences which hold good in either report. A comparison of the items given in the April and July Reports and those in the Federal Legislative List given in the Government of India Act, 1935, cost me six hours. I think, Sir, that the House will be handicapped very greatly in considering the Report at this stage.

With these few words I hope that the House will, instead of attempting to rush through this important piece of work, agree to give more thought and more time so that the work we do may be of lasting benefit to the Provinces and the States.

Shri Gopikrishna Vijayavargiya (Gwalior State): *[Mr. President under the prevalent conditions, we cannot afford to leave these matters undecided. The amendment of Maulana Hasrat Mohani which suggests postponement of these matters is improper. I think and I feel that the situation in the country is changing so fast that the work of constitution making should be concluded as soon as possible and we should take up the work of administration and planning and solve the problems of the people. The arguments advanced by Maulana Sahib are baseless. It is a surprising coincidence that the Maulana and a Prime Minister of an Indian State both demand postponement of the consideration of the Union Power Committee's Report on the ground that we need socialist republic. Both advance the same argument for its postponement. This is not the correct way to bring about socialism. The Socialist party can function even under this constitution. We desire to make our country united and great. For this, it is no argument that the Centre should be given no power and all power should vest with the provinces So far as, I can follow the speech of Maulana Sahib, his contention is that no power should be given to the Centre and India should continue in fragments. It is necessary that India should be strong. Historically India has been divided for ages but at present it is imperatively necessary that we should have a strong Centre.

I come from a State and I insist that the Centre must be very strong. I would appeal to the rulers, to their ministers and to the States Representatives who are present here, that they all should make the Centre very strong by conceding to it the maximum power so that India may become a very strong country. Therefore, the arguments advanced here for the postponement of the report are wrong and postponement would be harmful to the country. We cannot afford delay. As Mr. Pattani has just now said, we cannot even outline the constitution unless the questions relating to the Union Powers are decided. Therefore, it is very necessary that we should proceed to take into consideration the matters relating to the Union Powers and not postpone them.]*

[ ] English translation of Hindustani speech.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I desire to support this motion of adjournment but not to the extent proposed in the amendment itself or on the grounds on which it is supported. I wish to place before this House certain difficulties which confront Members who want to tackle the problem; and on that ground as well as on other grounds, I should ask the House to consider the suggestion that a committee be appointed—with regard to the personnel of which I have nothing to say—to consolidate the two reports, one dated the 28th April and the other which is under consideration, and then submit before the House a fresh report, taking into account certain momentous constitutional changes which have taken place after the second report.

I do not desire to follow the alternate expressions of the learned Mover in Urdu and English, which seem to me akin to alternate currents in electricity. It has put some members to great disadvantage and certainly put some strain on the reporters, some of whom are experts in taking down only English speeches and others only Urdu speeches.

Sir, I submit that the report of the 28th April is entirely out of date but yet the Honourable Mover Mr. Ayyangar has said that those parts of the report which are not inconsistent with the report under consideration may also be considered. On behalf of the members who have been elected on the statement of June 3rd, I should say that the first report is not before us and the second report is also by the time largely out of date—as has been pointed out—on the ground that the Independence of India Act has come into being after its publication. A fresh report is thus clearly called for.

Then again another difficulty has crept in. We knew from newspaper reports that the States acceded with regard to three subjects—defence external affairs and communiations. But Mr. Ayyangar has pointed out that the actual instruments of Accession really deal with subject under no less than 18 or 20 distinct heads.

Mr. Mahomed Sherrif: *[Mr. President, I listened attentively to the speech of Maulana Hasrat Mohani. He has adduced many reasons for the postponement of the resolution. I appreciate the sentiments which compelled Maulana Sahib to make his speech. Though I do not fully agree with the Socialist Republic about which he has spoken, to my mind the motion for the postponement of the resolution is indeed a good one. A perusal of the three lists attached to this report, pertaining to the Union Powers reveals that the Centre is to wield all powers as regards the States. You know that about a fortnight ago, the Viceroy had issued a statement saying that so far as the relations between the States and the Constituent Assembly are concerned, he does not want to interfere in the internal affairs of the States. But a perusal of the Union Powers' Committee's report makes painful reading; because the Centre, in addition to the three subjects mentioned above, wants to wield other powers as well. Our central Congress Party, which is a very strong party, has announced that it would not like to interfere in the internal administration of a State; but the report before us is not so reassuring as it ought to have been. In this connection, I want to state, that the consideration of the report should be postponed for the time being. This has also been demanded by the previous speaker. A Committee including the

representatives of the States should be formed, and this report should be presented before it for its consideration, and the decision reached by it, should be placed before us for our reconsideration.*

Mr. Nazir-uddin Ahmed: We are not, I believe, aware of theexistence of any such documents I think that copies of those important documents should be suppliedto us at once. It is very important in view of the fact that some subjects in the lists will deal with the States. In th e absu.ce of these importan documents, we are not in a position to decide as to how far the Lists are applicable to the States.

Then again, it has been pointed out by a speaker this morning that a distinction should be drawn between the Lists applicable to the Provinces and those relating to the States. As the two are jumbled together, it is difficult to distinguish them and try to find out what amendments should be suggested.

There are also other difficulties. The Honoura'ble Mover of the original motion has explained, I submit respectfully, in a very lucid speech, the whole subject in a masterly way. But the subject itself is extremely technical and involved. It therefore requires very carefulc onsideration by the Members to enable them to fully appreciate the implications of the various lists and the subject under consideration. For all these reasons, I should submit that the consideration be postponed, not till Doomsday as has been suggested, but for sometime. I should suggest that the Honourable Mover of the original motion should agree to the appointment of a small committee to sit and consider the whole thing in the light of the changes and give us a consolidated Report making clear the distinction between the Lists applicable to the Provinces, to the States and to the Centre. I think this is a reasonable request. It is not meant to delay matt rs. We are as anxious to expedite matters as others and so I think that things should be facilitated by adopting the course which I suggest. With these few words I submit that a little time should be given to us and a more comprehensive Report should be made to enable us to easily follow the subject.

Mr. President: Diwan Chaman Lal will now speak.

Shri Algu Rai Shastri (United Provinces : General): *[Mr. President, This amendement should be put to vote now. Much time has been devoted to it and no futher discussion is necessary.]*

Mr. President. I have already called upon Diwan Chaman Lal to speak. After his speech I will apply the closure.

Diwan Chaman Lal: Sir, as I listened to the debate I was surprised to find that very able and intelligent leaders of our country were obviously under some misapprehension in regard to the Motion that has been moved by Shri N. Gopalaswami Ayyangar. It struck me that they have perhaps not even read the Report before moving th motion for adjournment of consideration.

The main proposition before the House is this: The Report has been presented to this house in two parts, one in the month of April and

*[ ] *English translation of Hindustani speech.

[Diwan Chaman Lal]

the other in August. One, in other words, before the announcement of 3rd June and the other, after that announcement. It has been moved that the two parts of this Report be taken into consideration.

Now, Maulana Hasrat Mohani raised the point that it should not be taken into consideration unless and until the final report of the Union Constitution Committee has been placed before the House. You must realise—it is a matter of pure and simple commonsense—that the final report of the Union Constitution Committee cannot be presented to this House unless you tell those concerned what powers the Union Constitution is going to have and unless and until you allocate the powers between the Provinces and the Centre and so on. Unless and until you are sure of your own ground as to what powers you are going to have and what powers the provinces are going to have and what the subjects in the Concurrent List are going to be, you cannot present any final report. Therefore I submit that there is a logical fault in the very arguments used by Maulana Hasrat Mohani.

The other speaker who supported the motion for the adjournment of consideration of the Report is I believe a representative of the State of Cooch Behar. He is the Dewan of that State. He is a statesma who is supposed to have the destinies of the people of that State in his hand He raised the extraordinary objection : You have given us one report ; you have given us a second report. We are unable to understand the two reports. Therefore if a third report is given to us, that would help us to understand the first two reports. (*Laughter*). I do submit that the proposition of Shri Gopalaswami Ayyangar is a simple one. This House has agreed to have some sort of Federation and all that Shri Gopalaswami Ayyangar asks us to decide is what powers this Federation is to have. You have the right at this stage to discuss the quality and the quantity of the powers you want. You can point out, as some have pointed out, that the Federal authority of the Union should be confined to the three subjects enumerated. The first report gives you details of the three subjects, the powers that will vest with the Centre, the Provinces, etc. The report goes on to say that, in their opinion, there are certain residuary powers which may also be handed over to the Union and that there are certain other powers, which did not arise under the terms of the May 16 Plan, which may be taken possession of by the Centre. That is what the first report says. There is no ambiguity about it. The details also have been given.

The second report came after the statement of June 3 when the House decided that the Centre should be strong. This deals with the allocation of powers between the Centre and the Provinces and the three Lists are before us, the Federal List, the Provincial List, and the Concurrent List. Now, is there anything in these Lists to which anybody objects ? This is the time for raising such objections. If you do not want certain powers to be allocated to the Centre by the States or by the Provinces, this is the time to discuss the matter. I cannot see either reason or logic behind the demand for the postponement of this issue. I submit that this is merely a dilatory motion which cannot be supported by any reasonable argument. We should proceed to the discussion of the various subjects dealt with in the Report.

Mr. President: Closure has been moved. I will put the closure motion to the House. The Question is:

"That the question be now put".

The motion was adopted.

Mr. N. Gopalaswami Ayyangar: I owe the courtesy to the House to make a reply to the debate that has taken place on this motion for adjournment. Otherwise I should have thought any elaborate reply from me was unnecessary. I only wish to say that the speech made by Dewan Chaman Lal is a complete answer to the arguments advanced in favour of the motion for adjournment. I adopt the points that Dewan Chaman Lal made and I wish to say nothing more. I request you, Sir, to put this motion to the vote.

Mr. President: I will now put the motion for adjournment moved by Maulana Hasrat Mohani to the vote. It runs thus:

"That the Report of the Union Powers Committee be not taken into consideration before the revised and final report of the Union Constitution as well as of the modified Objectives Resolution, as suggested by Pandit Jawaharlal Nehru himself, are considered in the next session of the Constituent Assembly."

The motion was negatived.

Mr. President: Now, we shall take up the amendments of which I have received notice. The first amendment is by Mr. D. P. Khaitan No. 1 in List II.

Shri D. P. Khaitan (West Bengal: General): Mr. President, Sir, in as much as in the motion moved by Shri Gopalaswami Ayyangar only the second report was mentioned, I gave notice of an amendment.

Mr. Tajamul Husain: I rise on a point of order. The original motion moved by Mr. Gopalaswami Ayyangar has not been debated. We have only discussed the motion for adjournment and it is lost. Now, we should take up the original motion.

Mr. President: In discussing the original motion, these amendments arise. Now, this is an amendment to the original motion moved by Mr. Gopalaswami Ayyangar.

Mr. N. Gopalaswami Ayyangar: Perhaps, it would be correct Parliamentary procedure to put the motion to take the report into consideration to the vote, and, after that is carried, the amendments may be taken up one by one. I think the Honourable Member is correct.

Mr. President: Then I will put the original motion that the report be taken into consideration to the vote. Does any member wish to speak on that motion?

Mr. Hussain Imam: Mr. President, I believe that we are taking a very important decision on this most important subject. It is necessary, therefore, that we should consider calmly and quietly all the implications of this report. I am, Sir, speaking not on behalf of the Muslim League Party but as a citizen of India. I think that it is necessary that the approach of this Constituent Assembly should be different from that of Mr. Gopalaswami Ayyangar. I feel that those who are rich should not be allowed to get richer and those who are poor should not be reduced to further poverty. I mean that those of us who have the good fortune

[Mr. Hussain Imam]

or the bad fortune to live in Indian States, where they have no voice in the administration of the State, where they have no say in the Legislative matters, should not be left worse off than they were formerly. The position today is that in what was formerly British India, you have legislatures, democracy and popular representatives to administer them. In the States you have none of these three. Yet in paragraph 3 it is stated that the Indian States will be subject to control only in so far as they care to cede to the Centre. Now, who are these people who will make this decision? The Rulers of the States have been given autonomy to rule as they like. I have great respect for some of our modern States. There are a few States which are administered better than British India, who in matters of social justice and social equality can give a lead to British India. There are certain States which are comparable in size to the smaller provinces and the Chief Commissioners' areas, but the majority of the five hundred odd States are called States because of the courtesy and pleasure of the Political Department of the old Government of India. In the first place, Sir, I want that these rights and privileges which are being given to Indian States should not be handed over to the 562 States. At the most there are two dozen or three dozen States which can economically speaking have even a semblance of provincial autonomy. Provincial autnomy we should give to some of the States but the vast majority of the States that exist in India must either join up with other States and form themselves into units or they must be linked up with British India. It is wrong on our part to allow these autocratic Rulers to exercise more power than what the Bombay legislature can do or the C. P. Ministry can do. These are representatives of the people. Yet they cannot exercise those powers which are exercised by these autocratic Rulers of the States.

The Central Government has to defray the expenses for the defence of the country. What contribution are the Indian States going to make towards defence costs either on a *per capita* basis or an income basis ? They say that the provinces are making no contribution. But these provinces pay federal taxes which the States want to realise for themselves. The rights of the Indian States to impose federal taxes must be taken away. This is my first and fundamental difference with this report. No one other than the Federal authority should impose federal taxes, whether it is British or Indian States. I would not except from this sweeping remark even the most modern State of India, but I would concede this far that. I am prepared to allow the Indian States the same amount of powers which you have given under list II to the province. No excess over that should be allowed to any Indian State. The concurrent list should also apply equally to old British India and the Indian States both. British India does not exist today but we are inheriting all the evils there of. The evils that were brought about by giving wide powers to nonentities should not be sanctified by the approval of this House. We shall have to amend para. 3 so as to bring under its scope the over-riding authority of the Centre to impose federal taxes on all Units.

I may also mention, Sir, one important factor in this connection. Stress has been laid in the Instrument of Accession that so far as it goes

beyond the Statement of May 16th, it should be with the consent of the States. The May 16th Statement is scrapped. It no longer exists. It was one of the points why there was the break-up, why the June 3rd Statement was made. For every other purpose you have scrapped the May 16th Statement ; for the purpose of the Indian States alone you are keeping it alive. Groups have been scrapped, the division of the Central powers into Central and group has been scrapped. The number of units have been scrapped. Everything has been scrapped and as a Sovereign Body we are not bound by the 16th May Statement. It is wrong to take shelter behind the plea that the 16th May statement provided this and that. Whatever you had provided has been erased by the functions of the midnight of the 14th. Now you have got no drawbacks. Even the Independence Act which has been passed by the British House of Commons is now before us and we can amend it. That right has been given to you. So I claim, Sir, that it is wrong to take shelter behind the 16th May Statement. If the States are not prepared to come in, I think, then it is better that they should remain out and by economic pressures and other strong persuasive measures which the Central Government can apply we can bring them round. But what do we want them to do ? We do not want in any way to usurp their powers. We want to make them what they really are—units of a Federation. We have never heard of units exercising different powers, functions and taxation. It is some thing which will be quite approaching to the principles of democracy as well and it is as such that I do request my friends of the Constituent Assmbly to consider this matter calmly and come to a decision not actuated by any malice or by any ill-will toward the Indian States. We must do it frankly and honestly and let the Indian States also be honest. Why should they claim a right which my friend Pandit Shukla does not claim for his C. P.? If he is content with that power why should Rewa and other States lying in the C. P. claim a higher right? It is only equity and justice. It means that there should be uniformity in these two respects. The Indian States must not have any more power than the units either in taxation or legislation.

Mr. President : It seems there is no other speaker willing to speak So I shall put the motion to vote. It is really five minutes to one.

An Honourable Member : Closure.

Another Honourable Member : No, Sir, it will be very unfair.

Mr. President : One speaker has spoken about it. Is it the wish of the House that there should be further discussion ?

Many Honourable Members : Yes, Sir.

Mr. President : Any one who wishes to speak may do so for five minutes. There are still five mintes left.

Shri K. Santhanam : Mr. President, I do not want to go into any details of the distribution of powers as presented to us by the Union

[Shri K. Santhanam]

Powers Committee. I will have my own say on each item when it comes up for discussion, but there are certain general considerations which we have to keep in mind when we come to the discussions of these items. It is a great pity that our politics have been subject to violent oscillations during the last six months with the result that the minds of our own leaders also have had to go from one extreme to the other. In the Cabinet Mission Plan the idea was that the Units should be absolutely autonomous and even sovereign, and that they should surrender a small modicum of power to the Centre. Of course, there was the complication of the Group Constitution, and the whole thing was left vague but so far as the Central Government was concerned it was to have very limited powers. And some of our leaders were put on a Committee to define those powers and they tried their best to stretch these powers to their maximum. I doubt, if the Cabinet Mission's Scheme had come into operation, whether that stretching would have stood any real scrutiny. But the position was suddenly altered by the June 3rd plan and the resulting Independence Act. Now the position is we have got almost a unitary Centre which is trying to hand over certain powers to the Provinces and the whole plan of the Union Powers Committee is based on that procedure. They have tried to take the Government of India Act as their basis and considered what items can be transferred from the Provincial List to the concurrent list and Provincial list to the Federal list. I am afraid they have made a wrong approach to this problem. I too am anxious to have a strong Government for this country but my conception of strength of Centre is rather different from that embodied in the Union Powers Committee Report. I do not want that the Central Government should be made responsible for everything. The initial responsibility for the well-being of the people of the provinces should rest with the Provincial Governments. It is only in strictly all- India matters that the Central Government should have responsibility and should come into play. Therefore, the strength of a Centre consists not only in adequate powers in all-India subjects but freedom from responsibility for those subjects which are not germane to all-India but which really should be in the Provincial field. It is in this positive as well as negative delimitation of powers that a real federal system rests and I think the federal powers as defined by the Committee report err on the wrong side. It tries to burden the Centre with all kinds of powers which it ought not to have. Take for instance, 'vagrancy'. I cannot understand why 'vagrancy' has been taken away from the Provincial list and put in the concurrent list. Do you want all India to be bothered about vagrants? There is almost an obsession that by adding all kinds of powers, to the Centre, we can make it strong. There is another subject, Sir, called "economic planning" which is put in the concurrent list. Now, I know that planning is the most important preoccupation of the Central and Provincial Governments and that we must make some attempt to co-ordinate Central and Provincial policy, but is this the proper way to make it concurrent, so that the Centre can assume any power and can prevent any unit from planning in its own way even in the field of

Provincial subjects, even in agriculture ? Even in the matter of dairies, the Centre can pass a bill and take powers to itself in its own discretion. I say this should have been dealt with as a separate part of the Union Constitution, as to what powers of planning the Union Government should have and what powers of planning the Provincial Government should have and how these powers should be co-ordinated by consultation and consent, and not by simply saying that we have this all important Planning as one of the items in the concurrent list.

Then, take the financial distribution. They have put all taxation except land revenue and one or two other diminishing items, like excise on intoxicating liquors, in the federal list. The report says that some provision for assignment should be made. But unless together with the items, method of allocating the shares of the proceeds is given, the provinces will be beggars at the door of the Centre. I do not want any constitution in which the Unit has to go to the Centre and say " I cannot educate my people ; I cannot give sanitation ; give me a dole for the improvement of roads, for industries, for primary education ". Let us rather wipe out the federal system and let us have a Unitary system. To-day, our financial position is that, even if you give all the powers of taxation to the Centre, the Centre will not have enough money. Even if you give all powers of taxation to the provinces, the provinces will not have enough funds. Because even the single item of primary education requires, according to the Sargent Committee Report all the finances of the Centre and the Provinces put together. Similarly, if you take Public Health, according to the Bhore Committee Report, it requires 300 crores which is the total of the provincial and central taxation. If you take Defence, how much money can we not spend on a single item as Navy or Air Force or the Army ?! To-day, we have not got enough money for any one of these items. We must therefore make an equitable distribution, by statute and not be left to an evasive machinery to be determined in the future. Let us start with an equitable distribution of the existing finances as they are, and then try to develop the resources. If this distribution of powers is adopted without further scrutiny, without further careful adjustment, in three years' time, all the provinces will revolt against the Centre and the Central Ministry will be in a most unenviable position. We must frame a constitution in which the Centre can say, " This is not my business, you have an elected Governor on the adult franchise, you have your ministers, go to them. We have given them elastic sources of revenue". What is happening in the United States ? Both the Centre and the States can levy all kinds of tax. They can levy Income Tax. There is nothing to prevent them except the popular will. There, the Ministers or the Governor can go to the people and say, " we have got powers of taxation ; pay the taxes, and we will give you entertainments, circuses, and whatever you want ". Instead of that, here, they will have to say, " we shall give you entertainment ; let the Centre give us money ". That will be an unenviable position ; that will be a weak position for the Centre. I should like to warn the leaders who are piloting this report to be careful and not to add all kinds of subjects to the Centre.

[Shri K. Santhanam]

Take the case of industries. Now, Defence Industries is one central item. Another item is, any industries which the Federal Legislature may declare to be a federal in ustry. In the provincial list, is included any other industry which the federal legislature has not taken unto itself, either under this item or under the defence item, or under the preparation for defence. What will the provinces do ? They will say, that it comes under preparation for defence, or defence industries or any other industry which has been declared by the federal law to be federal industries, and that they have no responsibility to develop industries. They will say, "go to the Centre ". Is this the way that we want to do things ? No, Sir. If you want to say coal, steel and such industries will be allotted to the Centre and the other industries like cottage industries, medium industries and food industries, will be allotted to the provinces, that will be acceptable.

Always comes the argument, " after all, who are in the Centre ? They are your representatives. Why do you expect them to do anything which you do not like." I think this is often a mistake. As a member of the Central Legislature, I have always wanted more money for the Centre. If you put me in the provincial legislature, I would want more money for the provinces. The spirit of the corporation is something irresistible. It overpowers us and overcomes us. Therefore, we should see that the Centre is not allowed to infringe in the region or power of the unit and that the unit is not allowed to infringe upon the power of the Centre. It is only by making things precise and clear, by making things determinable by courts of law that you can preserve the federal system intact. All progress will be blocked by putting all kinds of industries in the hands of the Centre, defence industries, and industries which may be declared federal by federal law.

At the time of passing the Government of India Act of 1935 and in the 1921 Act, the Parliament always said, " we have given special powers and powers of discretion, but we do not think they will ever be called into operation ". But have we known any single power which was not exercised and exercised to the utmost extent ? Section 93 was considered to be an extreme section. Nobody will suspend the constitution, it was said in the Parliament. But on the very first day, on a mere technical ground, the Governor simply signed an order, and took the Government into his own hands.

Mr. N. Gopalaswami Ayyangar : May I ask the honourable member whether any large industries have been taken over by the Centre in the last few years ?

Shri K. Santhanam : In the last few years, the Central Government has been in a state of paralysis. The Policy Committee Reports recommended the taking over of all and sundry industries into Central Control. Legislation could not be introduced. This state of paralysis was responsible for many industries not being taken over by the Centre. I say, unless some such paralysis comes over the New Government, I shall be surprised if it does not take over many industries. One may say, textiles of Bombay may be taken over and it will be taken over. Another will say, milk is adulterated and let us take the dairies. There is no limit to the power. Even in the United States, the Federal Government is going on taking more and more power.

Therefore, I say, Sir, let us be careful ; let us not give all the power to the Centre. Let the Units also have some work, some responsibilities and some resources. Unless we do this, our constitution will not be on sure foundations. The whole thing will break down. This is the warning which I wish to utter here.

Mr. President : There will be further discussion to-morrow about this.

ANNOUNCEMENT *re* PERSONNEL OF COMMITTEE TO CONSIDER THE INDEPENDENCE ACT, ADAPTATIONS RULES, ETC

Mr. President : There will be further discussion to-morrow about this.

Before we adjourn, I desire to make an announcement, A committee consisting of Mr. Mavlankar, Mr. Hussain Imam Shri Purushottamdas Tandon, Dr. Ambedkar, Mr. Alladi Krishnaswami Ayyar, Mr. Gopalaswami Ayyangar and Mr. B. L. Mitter is appointed to consider the Indian Independence Act, the Adaptations of the Government of India Act, 1935, the Rules and Standing Orders of the Legislative Assembly, the Rules and Standing Orders in force in the Constituent Assembly, etc. and report on the following matters :—

(1) What are the precise functions of the Constituent Assembly under the Indian Independence Act ?

(2) Is it possible to distinguish between the business of the Constituent Assembly as a constitution-making body and its other business and can the Constituent Assembly set apart certain days or periods solely for the former ?

(3) Should the members representing the Indian States in the Constituent Assembly be given the right to take part in proceedings which do not relate to constitution-making or to the subjects in respect of which they have acceded?

(4) What new Rules or Standing orders, if any, and what amendments if any in the existing Rules or Standing Orders should be made by the Constituent Assembly or its President?

I think this covers the points which were discussed in the earlier part of the day. I am appointing this Committee and expect the Committee will give us their Report very soon.

Dr. P. S. Desmukh : Sir, there is one point which I would like to suggest, and that is, the examination of the permissibility or otherwise of the same member being a member of two legislatures. Hereafter, we are going to be... ....

Mr. President : I think that this is covered by the Adaptations.

The House stands adjourned till 10 A.M. to-morrow.

The Assembly then adjourned till Ten of the clock on Thursday, the 21st August 1947.

CONFIDENTIAL.

APPENDIX 'A'

No. CA/23/Com./47

CONSTITUENT ASSEMBLY OF INDIA

REPORT OF THE UNION POWERS COMMITTEE

FROM

PANDIT JAWAHAR LAL NEHRU,

CHAIRMAN, UNION POWERS COMMITTEE.

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

SIR,

On the 28th April 1947, the Hon'ble Sir N. Gopalaswamy Ayyangar on behalf of our Committee, presented our first report to the Constituent Assembly. In doing so, he referred to the changes that were developing in the political situation and were likely to affect the nature and scope of the Committee's recommendations, and sought permission to submit a supplementary report at a later date. The House was pleased to grant us leave to do so.

2. Momentous changes have since occurred. Some parts of the country are seceding to form a separate State, and the plan put forward in the Statement of the 16th May on the basis of which the Committee was working is, in many essentials, no longer operative. In particular, we are not now bound by the limitations on the scope of Union Powers. The first point accordingly that we considered was whether, in the changed circumstances, the scope of these powers should not be widened. We had no difficulty in coming to a conclusion on this point. The severe limitation on the scope of central authority in the Cabinet mission's plan was a compromise accepted by the Assembly much, we think, against its judgment of the administrative needs of the country, in order to accommodate the Muslim League. Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of co-ordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. At the same time, we are quite clear in our minds that there are many matters in which authority must lie solely with the Units and that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively. We have accordingly come to the conclusion—a conclusion which was also reached by the Union Constitution Committee—that the soundest framework for our constitution is a federation, with a strong Centre. In the matter of distributing powers between the Centre and the Units, we think that the most satisfactory arrangement is to draw up three exhaustive lists on the lines followed in the Government of India Act of 1935, *viz.*, the federal, the provincial and the concurrent. We have prepared three such lists accordingly and these are shown in the Appendix.

We think that residuary powers should remain with the Centre. In view however of the exhaustive nature of the three lists drawn up by us, the residuary subjects could only relate to matters which, while they may claim recognition in the future, are not at present identifiable and cannot therefore be included now in the lists.

3. It is necessary to indicate the position of Indian States in the scheme proposed by us. The State which have joined the Constituent Assembly have done so on the basis of the 16th May Statement. Some of them have expressed themselves as willing to cede wider powers to the Centre than contemplated in that Statement. But we consider it necessary to point out that the application to States in general of the federal list of subjects, in so far as it goes beyond the 16th May Statement, should be with their consent. It follows from this that in their case residuary powers would vest with them unless they consent to their vesting in the Centre.

4. To enable States and, if they so think fit, Provinces also, to cede wider powers to the Centre, we recommend that the constitution should empower the Federal Government to exercise authority within the Federation on matters referred to them by one or more Units, it being understood that the law would extend only to the Units by whom the matter is referred or which afterwards adopt the law. This follows the Australian model as set out in section 51 (xxxvii) of the Australian Constitution Act.

5. We have included in the federal list the item "the strength, organisation and control of the armed forces raised and employed in Indian States". Our intention in doing so is to maintain all the existing powers of co-ordination and control exercised over such forces.

6. We recommend to the Assembly the proposals contained in para 2-D of our previous report on the subject of federal taxation. It is quite clear, however, that the retention by the Federation of the proceeds of all the taxes specified by us would disturb, in some cases violently, the financial stability of the Units and we recommend therefore that provision should be made for an assignment, or a sharing, of the proceeds of some of these taxes on a basis to be determined by the Federation from time to time.

I have the honour to be,

Sir,

Your most obedient servant,

JAWAHARLAL NEHRU,

Chairman.

NEW DELHI ;
July 5, 1947.

APPENDIX

LIST I—FEDERAL LEGISLATIVE LIST

1. The defence of the territories of the Federation and of every part thereof and generally all preparation for defence, as well as all such acts as may be conducive in times of war to its successful prosecution and after its termination to effective demobilisation.

2. Requisitioning of lands for defence purposes including training and manoeuvres.

3. Central Intelligence Bureau.

4. Preventive detention in the territories of the Federation for reasons of State.

5. The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units ; the strength, organisation and control of the armed forces raised and employed in Indian States.

6. Defence industries.

7. Naval, Military and Air Force works.

8. Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.

9. Arms, firearms, ammunition and explosives.

10. Atomic energy, and mineral resources essential to its production

11. Foreign Affairs; all matters which bring the Federation into relation with any foreign country.

12. Diplomatic, consular and trade representation.

13. United Nations Organisation.

14. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

15. War and Peace.

16. The entering into and implementing of treaties and agreements with foreign countries.

17. Trade and Commerce with foreign countries.

18. Foreign loans.

19. Citizenship, naturalization and aliens.

20. Extradition.

21. Passports and visas.

22. Foreign jurisdiction.

23. Piracies, felonies committed on the high seas and offence committed in the air against the law of nations.

24. Admission into, and emigration and expulsion from, the territories of the Federation ; pilgrimages to places beyond India.

25. Port quarantine ; seamen's and marine hospitals, and hospitals connected with port quarantine.

26. Import and export across customs frontiers as defined by the Federal Government.

27. The institutions known on the 15th day of August, 1947, as the Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any other institution declared by Federal law to be an institution of national importance.

28. The institutions known on the 15th day of August, 1947, as the Benares Hindu University and the Aligarh Muslim University.

29. Airways.

30. Highways and waterways declared by the Federal Government to be Federal highways and waterways.

31. Shipping and navigation on inland waterways, declared by the Federal Government to be Federal waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways ; carriage of passengers and goods on such waterways.

32. (a) Posts and telegraphs; provided that the rights existing in favour of any individual State Unit at the commencement of this Constitution shall be preserved to the Unit until they are modified or extinguished by agreement between the Federation and the Unit concerned or are acquired by the Federation, subject however, always to the power of the Federal Parliament to make laws for their regulation and control ;

(b) Telephones, wireless, broadcasting, and other like forms of communication, whether owned by the Federation or not ;

(c) Post Office Savings Bank.

33. Federal Railways ; the regulation of all railways (other than minor railways) in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

34. Maritime shipping and navigation, including shipping and navigation on tidal waters.

35. Admiralty jurisdiction.

36. Ports declared to be major ports by or under Federal Law or existing Indian Law including their delimitation.

37. Aircraft and air navigation : the provision of aerodromes, regulation and organisation of air traffic and of aerodromes.

38. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

39. Carriage of passengers and goods by sea or by air.

40. The Survey of India, the Geological, Botanical and Zoological Surveys of India, Federal Meteorological organisations.

41. Inter-Unit quarantine.

42. Federal Judiciary.

43. Acquisition of property for the purposes of the Federation.

44. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

45. Census.

46. Offences against laws with respect to any of the matters in this list.

47. Enquiries, surveys and statistics for the purposes of the Federation.

48. Federal services and Federal Public Service Commission.

49. Industrial disputes concerning Federal employees.

50. Reserve Bank of India.

51. Property of the Federation and the revenue therefrom, but as regards property situated in a Unit subject always to legislation by the Unit, save in so far as Federal Law otherwise provides.

52. Public debt of the Federation.

53. Currency, foreign exchange, coinage and legal tender.

54. Powers to deal with grave economic emergencies in any part of the territories of the Federation affecting the Federation.

55. Insurance.

56. Corporations, that is to say, the incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one Unit, but not including universities.

57. Banking.

58. Cheques, bills of exchange, promissory notes and other like instruments.

59. Patents, copyright, inventions, designs, trademarks and merchandise marks.

60. Ancient and Historical Monuments : archaeological sites and remains.

61. Establishment of standards of weight and measure.

62. Opium, so far as regards cultivation and manufacture, or sale for export.

63. Petroleum and other liquids and substances declared by Federal Law to be dangerously inflammable, so far as regards possession, storage and transport.

64. Development of industries where development under Federal control is declared by Federal Law to be expedient in the public nterest

65. Regulation of labour and safety in mines and oilfields.

66. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal Law to be expedient in the public interest.

67. Extension of the powers and jurisdiction of members of a police force belonging to any part of a Governor's Province or Chief Commissioner's Province to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be ; extension of the powers and jurisdiction of members of a police force belonging to any Unit to railway areas outside that Unit.

68. All Federal elections ; and Election Commission to superintend, direct and control all Federal and Provincial elections.

69. The salaries of the Federal Ministers and of the Chairman and Vice-Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People ; the salaries, allowances and privileges of the members of the Federal Parliament.

70. The enforcement of attendance of persons for giving evidence or producing documents before committees of the Federal Parliament.

71. Duties of customs including export duties.

72. Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) alcoholic liquors for human consumption ;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;

(*c*) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (*b*) of this entry.

73. Corporation tax.

74. State lotteries.

75. Migration from one Unit to another.

76. Jurisdiction and powers of all courts, with respect to any of the matters in this list.

77. Taxes on income other than agricultural income.

78. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of the companies.

79. Duties in respect of succession to property other than agricultural land.

80. Estate duty in respect of property other than agricultural land.

81. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

82. Terminal taxes on goods or passengers, carried by railway or air ; taxes on railway fares and freights.

83. The development of inter-Unit waterways for purposes of flood control, irrigation, navigation and hydro-electric power.

84. Inter-Unit trade and commerce.

85. Fishing and fisheries beyond territorial waters.

86. Federal manufacture and distribution of salt ; regulation and control of manufacture and distribution of salt by other agencies.

Note.—A section should be incorporated in the constitution itself prohibiting the imposition of any duty or tax on salt.

87. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II—PROVINCIAL LEGISLATIVE LIST.

1. Public order (but not including the use of naval, military or air forces in aid of the civil power) ; the administration of justice ; constitution and organisation of all courts, except the Supreme Court, and fees taken therein ; preventive detention for reasons connected with the maintenance of public order ; persons subjected to such detention.

2. Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this list ; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein ; arrangements with other Units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Works, lands and buildings vested in or in the possession of the Province.

8. Compulsory acquisition of land except for the purposes of the Federation.

9. Libraries, museums and other similar institutions controlled or financed by the Province.

10. Elections to the Provincial Legislature and of the Governors of the provinces subject to the provisions of paragraph 68 of list I.

11. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof ; the salaries, allowances and privileges of the members of the Provincial Legislature ; and the enforcement of attendance of persons for giving evidence or producing documents before Committees of the Provincial Legislature.

12. Local Government, that is to say, the Constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

13. Public health and sanitation hopitals and dispensaries ; registration of births and deaths.

14. Pilgrimages, other than pilgrimages to places beyond India.

15. Burials, and burial and burning grounds.

16. Education including Universities other than those specified in paragraph 28 of List I.

17. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I ; minor railways subject to the provisions of List I with respect to such railways ; municipal tramways ; ropeways ; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways ; ports, subject to the provisions in List I with regard to major ports ; vehicles other than mechanically propelled vehicles.

18. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

19. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases ; improvement of stock and prevention of animal diseases ; veterinary training and practice ; pounds and the prevention of cattle trespass.

20. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents ; transfer, alienation and devolution of agricultural land ; land improvement and agricultural loans ; colonization ; Courts of Wards ; encumbered and attached estates, treasure trove.

21. Forests.

22. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal Control.

23. Fisheries.

24. Protection of wild birds and wild animals.

25. Gas and gasworks.

26. Trade and commerce within the Province ; markets and fairs.

27. Money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods ; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods.

31. Weights and measures except establishment of standards.

32. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respect poisons and dangerous drugs, to the provisions of List III.

33. Relief of the poor ; unemployment.

34. The incorporation, regulation, and winding-up of corporations not being corporations specified in List I, or Universities ; unincorporated trading, literary, scientific, religious and other societies and associations , co-operative societies.

35. Charities and charitable institutions ; charitable and religious endowments.

36. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

37. Betting and gambling.

38. Offences against laws with respect to any of the matters in this List.

39. Inquiries and statistics for the purpose of any of the matters in this List.

40. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

41. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in the territories of the Federation—

(*a*) alcoholic liquors for human consumption ;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs ;

(*c*) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (B) of this entry.

42. Taxes on agricultural income.

43. Taxes on lands and buildings, hearths and windows.

44. Duties in respect of succession to agricultural land.

45. Estate duty in respect of agricultural land.

46. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Parliament relating to mineral development.

47. Capitation taxes;

48. Taxes on professions, trades, callings and employments.

49. Taxes on animals and boats.

50. Taxes on the sale of goods and on advertisements.

51. Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars.

52. Taxes on the consumption or sale of electricity.

53. Cesses on the entry of goods into a local area for consumption use or sale therein.

54. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

55. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

56. Dues on passengers and goods carried on inland water-ways.

57. Tolls.

58. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

LIST III—CONCURRENT LEGISLATIVE LIST.

1. Criminal Law, including all matters included in the Indian Penal Code at the date of commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of the naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the code of Criminal Procedure at the date of commencement of this Constitution.

3. Removal of prisoners and accused persons from one Unit to another Unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of commencement of this Constitution ; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes; and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths ; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce ; infants and minors ; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land ; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency.

13. Administrators-general and official trustees.

14. Stamp duties other than duties or Fees collected by means of judicial stamps, but not including rates of stamp duty.

15. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List II.

16. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

17. Legal, medical and other professions.

18. Newspapers, books and printing presses.

19. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

20. Poisons and dangerous drugs.

21. Mechanically propelled vehicles.

22. Boilers.

23. Prevention of cruelty to animals.

24. Vagrancy ; nomadic and migratory tribes.

25. Factories.

26. Welfare of labour ; conditions of labour ; provident funds ; employers' liability and workmen's compensation ; health insurance, including invalidity pensions ; old age pensions.

27. Unemployment and social insurance.

28. Trade union ; industrial and labour disputes.

29. The prevention of the extention from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

30. Electricity.

31. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to Federal waterways.

32. The sanctioning of cinematograph films for exhibition.

33. Persons subjected to preventive detention under Federal authority.

34. Economic and social planning.

35. Inquiries and statistics for the purpose of any of the matters in this List.

36. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

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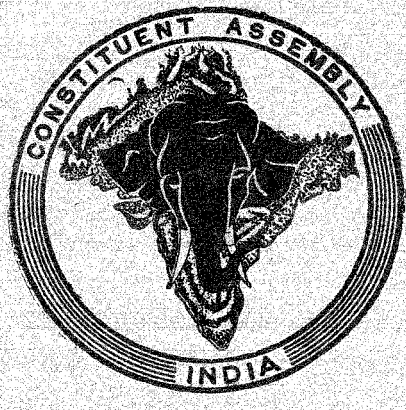

Thursday
21st Aug.
1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Price 5 Annas

Thursday, the 21st August, 1947.

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

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following member presented his credentials and signed his name in the Register—

H. H. Raja Anand Chand (of Bilaspur) (Punjab States).

The following members also took the oath :—

(1) H. H. Raja Anand Chand (of Bilaspur).

(2) Mr. Surendra Mohan Ghosh (West Bengal : General).

REPORT OF THE UNION POWERS COMMITTEE—(*contd.*)

Mr. President: We shall now proceed with the resolution which was under discussion yesterday.

Mr. H. V. Kamath (C. P. and Berar : General) : Mr. President, Sir, permit me to invite your attention to a matter of mere routine. As members of the Dominion Legislature, may we not reasonably expect to receive the *Gazette of India* and other official publications of Government to which the members of the former Central Legislature were entitled?

Mr. President: I will make enquiries about it.

Mr. Mahomed Sheriff (Mysore): Mr. President, Sir, the Report of the Union Powers Committee that forms the subject matter of discussion today is a very important document as it vitally affects the privileges and the rights of the people living in the States as well as in the provinces. It is important, Sir, because it seems to me that only on a proper and appropriate allocation of the powers between the Centre on the one hand and the provinces and the States on the other that the future good government of the country will depend. It is necessary, therefore, that we should so allocate or distribute the powers as to retain effective control in the Centre, while not denuding the people living in the States and the provinces of their powers. You know, Sir, that in a federation there is a recognised division of loyalties and interests and in order to blend them a strong Centre is very necessary, but you also know, Sir, that too strong a Centre would result in the Centre becoming very oppressive and would result in the crushing, so to speak, of the liberties and privileges of the people living in the component units. Therefore we must be very circumspect and very careful in the matter of the distribution of the powers. We must be

[Mr. Mahomed Sheriff]

careful to see that the distribution is so made as to effect a happy compromise between strength on the one side and consideration of the rights and privileges of the people living in the States and in the provinces on the other side. I have gone through the lists which are appended to this Report very carefully and I have also heard with rapt attention the speech made so lucidly by Mr. Gopalaswami Ayyangar. He has discussed threadbare the different aspects of the question. He has placed before us all the aspects of the question, all the pros and cons of the issue. He says, "Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of co-ordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. At the same time, we are quite clear in our minds that there are many matters in which authority must lie solely with the Units and that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively. We have accordingly come to the conclusion that the soundest framework for our constitution is a federation, with a strong Centre". Sir, with due deference to Mr. Gopalaswami Ayyangar, I do not think that this report is a very satisfactory one inasmuch as it wants to assign to the Provinces and the States a very secondary part. After 150 years of turmoil, after 150 years of sacrifice undergone by the people of India, referred to so very lucidly by Pandit Jawaharlalji the other day, we have uprooted British imperialism. Let not that imperialism be perpetuated in another form. Why should the Centre be jealous of the component parts? After all, the people living in the States and Provinces are part of the whole. Their activities are counterparts to the activities of the Centre so that there should not be this suspicion. I submit, therefore, that the Centre should not arrogate to itself all the powers. Coming as I do from the State of Mysore, I feel that this report is very unsatisfactory. You know, Sir, that we have acceded to the Indian Dominion on three important questions, Foreign Affairs, Communications and Defence. These are the matters on which we have made a treaty and acceded to the Dominion. So far as the Federal Legislative List is concerned, you have tried to take away the powers from us. For example, you want to interfere with our trade. You want to retain for yourself trade and commerce with foreign countries. You want power to requisition land for defence purposes. All this savours of some force. So far as this report is concerned, you, Sir, yesterday observed that we should deal with only salient points.

An Honourable Member: Not in this connection.

Mr. Mahomed Sheriff: I am sorry. In any case, I would request the House to see that the Centre does not arrogate to itself all the powers but that there is an equitable and happy compromise in the distribution of powers between the Centre and the units.

Shri Alladi Krishnaswami Ayyar (Madras: General) Mr. President, after the very full exposition of the report by my Honourable friend Mr. Gopalaswami Ayyangar I had not intended to take part in the debate on the Resolution now before the House, namely, the Report of the Committee on the Union Powers being taken into consideration. But I felt compelled to do so by reason of certain remarks of my Honourable friend Shri Santhanam (for whose opinion and remarks I always entertain a high regard) which suggest that the Committee did not seriously go about their business. The remarks of my Honourable friend fall under two heads: (1) Bearing on the subject of federal finance and the distribution of taxing power between the Federation and the units. (2) The general encroachment on provincial legislative power by the addition of certain items to the Federal List or to the Con-Current list. I shall deal with the two points *seriatim*.

There is no gainsaying that the subject of federal finance and the distribution of the taxing power is a difficult and complicated problem in any federal scheme of Government and has to be approached with caution and discerning and at every stage when we are dealing with this subject we have to remember that, after all, it is an individual or a corporation that is taxed though there may be two taxing agencies, and that there is no unlimited scope for taxation. Secondly, the industrial, commercial and agricultural economy of the country is so closely knit together that the taxation in one sphere must necessarily have its repercussions on taxation in another sphere. Bearing these points in view, let us approach the consideration of the taxing system of other Federations and see if on the whole the system adopted in India is not an improvement on the system in other countries with due regard to the peculiar conditions, the poverty and the taxable capacity of the average citizen in this country. In Australia the Commonwealth has plenary powers of taxation with the only safeguard that it cannot discriminate between States or parts of States. I am mentioning Australia particularly because it is a Federation in which the residuary power is in the Union. The States have plenary powers of legislation and it is only in particular matters that powers are confided to the Centre. Even in that country with the growing needs of a modern state, it was felt that the Federation must have plenary powers of taxation. There is no limit at all to the power of taxation in Australia in the Centre excepting this, namely, that it shall not discriminate between State and State. In regard to excise and customs the power in the Commonwealth is exclusive though in regard to other subjects of taxation the Commonwealth has a concurrent and co-extensive power with that of the States. In the Constitution of the Dominion of Canada the power of the province in the matter of taxation is confined to direct taxation and to shop and other licenses for the raising of revenue and it is in the exercise of the power of direct taxation that Provinces in Canada have been raising Corporation taxes, income-tax and succession duty, where the succession has taken place within the limits of the province. So far as the Dominion is concerned it has plenary and unrestricted power. The Royal Commission appointed recently to investigate

[Shri Alladi Krishnaswami Ayyar]

Dominion and Provincial relations was difinitely in favour of the Provinces withdrawing from all Corporation tax except beneficial licence taxes, tax on real estate or consumption taxes applicable to corporations and other consumers. The differential taxes levied by different provinces in Canada have led to the crushing of enterprise, the lack of uniformity and efficiency from divided jurisdiction and double and treble taxation. The subject of succession duty by provinces has led to friction of jurisdiction and has been a source of friction and litigation before the Privy Council and double income-tax both by the Provinces and the Centre has been the subject of adverse comment by the industries concerned. A thorough revision of the taxing system was recommended by the Committee with a view to secure uniformity, the main recommendation being that the taxing power should reside in the dominion and that an adjustment should be made between the Provinces in regard to the taxes levied. While on this subject I may point out I am in favour of a definite proportion being fixed, between the provinces and the Centre though the tax-collecting medium may be the Centre in the interest of uniformity. I have no doubt that if a financial Commission or a Committee goes into this matter, they will be able to arrive at a satisfactory conclusion so that the Provinces may get the necessary quota for the purpose of meeting the various social service expenditure in the provinces. In America again under Section 8, a general power of taxation is vested in the Congress, subject only to the restriction that the duties imposed including excise shall be uniform throughout the United States and that no tax or duty shall be levied on articles exported from any State. Under the scheme of financial distribution in the Government of India Act and to some extent as envisaged in the present Report as far as possible the object is kept in view to prevent a double levy on the citizen from two different sources. That is why certain specific taxes have been assigned to the Centre and certain other taxes to the Provinces. Even in regard to taxes in respect of which the Centre is the collecting agency on grounds of convenience, provision is made for the distribution of the same to the provinces, subject only to collection charges or for division of all the proceeds between the Centre and the Provinces. In regard to certain taxes like corporation tax, customs and certain specific items of excise the Centre is both the collecting agency and the authority entitled to the proceeds thereof. In regard to other items like estate duty, succession duty and so on, in the interest of uniformity, speedy collection and administrative efficiency the Centre is constituted the collecting agency, the proceeds being distributed between the Provinces. In regard to income-tax the scheme is for the distribution between the Centre and the Provinces. The Provinces have the sole right of collection and exclusive beneficial interest in a few items of taxation. While I do not dispute the need for readjustment or even re-allocation in regard to a few items of taxation in the light of the recommendations of any Committee appointed for the pur-

pose, I venture to state that the scheme of distribution in the Government of India and to some extent outlined in the First Committee's report is a sound one and in some respects an improvement upon the scheme of taxation in other countries.

Beyond making certain general observations, my honourable friend has not chosen to state in what respects the scheme of taxation and distribution is unsound and in what respects the recommendations of the Committee are radically defective. So much for finance.

In regard to the scheme of distribution of powers, the House will realise that there is nothing to take exception to generally. While a good number of items in the Central list can be brought under the head of Defence, Foreign Affairs and Communications, the three main heads envisaged by the Cabinet Mission Scheme, the other items such as Bills of Exchange, Banking, Corporation Law, Inter-unit trade bear upon the general welfare of the country. It is possible in regard to Banking, Corporation Law and Insurance, following the Australian and Canadian model, to differentiate between Corporations having purely provincial objects and Corporations whose objects extend beyond the limits of the Units. If so, it would be open to any Committee or to this House to take that into consideration and canvass that point whether it is possible to make any exception in regard to Corporations or Banks having purely provincial objects. We have been crying about a strong Centre. If you look at the provincial lists, very few if at all of the provincial list have been taken up and transferred to the federal list. It will be a much more useful purpose to take item after item in the provincial list. We ought to take item after item in the Central list and see which of them can be transferred to the provincial list instead of arguing abstractly, Centre *versus* Provinces, a strong Centre *versus* weak Centre, strong Provinces *versus* weak Provinces. This is of no assistance when we are dealing with the practical question of evolving a constitution for the future. We shall have to concentrate our attention in the next few days on particular items and see which of the items deserve to be modified. That would be a much more useful purpose than a general attack upon what might be called a strong Centre or a weak Centre. There may be very few items in the Centre and yet that Centre may be strong. Today it cannot be said that Australia has not a strong Centre; today it cannot be said that America has not a strong Centre. Therefore, having regard to the exigencies of the Indian situation, concentrating our attention upon the main topics of national interest in their relation to the subjects, we have to see which of them can find a place in the Central list, which of them can find a place in the concurrent list and which of them can find a place in the provincial list. That would be a more useful mode of approach than a general attack upon the Centre, Provinces and so on. Very few if at all of the items of the provincial list have been taken over to the Centre, as I have already stated.

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The existence of a concurrent list in matters like the general code of Indian law, or Hindu Law makes for a uniformity of law. Here again, it is a very useful feature in our constitution. For example, take a matter like the Transfer of Property Act, the Hindu Law, the Law of Succession and so on. There is nothing to prevent even the States from adopting most of the items in the concurrent list. I do not see any reason why the States for example in the interests of sovereignty must be really going on copying or making some small differentiations and passing their own acts in regard to matters of vital and common interest to the whole of India. The common practice that is now obtaining in most of the States is, after an Act is passed by the Indian legislature, for the same Act to be copied in the Indian States with some slight modifications, modifications which may add to the purse of the lawyer and not help the uniformity of the law in the different units of India.

Then, coming to the break-down provisions, if the break-down provisions have been introduced, it was at the instance and on the insistence, if I may say so, of some of the provincial representatives who are occupying responsible positions of Ministers in the different provinces of India. Therefore, Sir, I venture to state that the labours of the Union Powers Committee deserve careful consideration at the hands of the Assembly, and I have no doubt that at the end of your labours and after searching criticism which I have no doubt will be coming from enlightened quarters of this House, you will find, it contains nothing that can be taken exception to. I therefore support the motion that the Report be taken into consideration by the House

Shri Balkrishna Sharma (United Provinces: General): Mr. President, Sir, I have come to support the motion that the Union Powers Committee's second Report be taken into consideration.

While we have a preliminary discussion of this report, we are generally called upon to express our views regarding the fundamentals on which this Union Powers Committee's Report is based. In the second paragraph of the Report, it has been said :

"The severe limitation on the scope of central authority, in the Cabinet Mission's plan was a compromise accepted by the Assembly much, we think, against its judgment of the administrative needs of the country, in order to accommmodate the Muslim League. Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace of co-ordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere."

I think, Sir, this is a principle to which no sane-minded person can take exception. When we accepted the May 16th Plan and when as a result of that we came to the conclusion that the powers that were to be vested in the Centre were very limited, most of us felt that that was not in the fitness of things and that the Centre must have more powers in order to execute the responsibilities that are to devolve upon it as a result of our gaining independence. But, then, as has been

very rightly said, we had no say, but to accept the principles that were laid down in the May 16 plan. Now that plan has been scrapped and we, today, have to be very clear in our minds as to what we mean by a strong centre and whether any powers that we give to the Centre are necessarily detrimental to the free growth of the provinces.

Before we come to discuss the various items that are given in the lists, it is necessary, Sir, that we note what the attributes of a strong Centre are. To me, the attributes of a strong Centre are that it should be in a position to think and plan for the well being of the country as a whole, which means that it must have the authority not only to co-ordinate the activities during times of stress and strain, but also the power of initiative to give directions to the various provinces in regard to the economic development of the country. The second attribute of a strong Centre is that it should be in a position to supply the wherewithal to the provinces for their better administration wherever the need arises. The third attribute is that it should have the right in times of stress and strain to isue directives to the provinces regulating their economic and industrial life in the interests of the country as a whole. The fourth attribute of a strong Centre is that it must have sufficient powers to protect the country against foreign aggression as also internecine warfare. Then the fifth attribute of a strong Centre is that it must be powerful and strong enough to represent the whole country in the international spheres. These are the attributes to me of a strong Centre.

The next question arsises whether these being the attributes of a strong Centre we want a strong Centre or whether we do not. And before we discuss this question whether we want a strong or weak centre, we should at once understand that the existence of a strong centre in no way militates against the existence of a powerful living unit inside that central authority.

Yesterday we heard rather curious speeches from two of the stalwarts of provincial autonomy. One was from Maulana Hasrat Mohani and the other from Shri K. Santhanam. Mr. Santhanam spoke rather bitterly and very vehemently about the powers that are proposed to be given to the Centre under this scheme of the Union Powers Committee Report. But if we analyse the lists that have been appended to it we will find that there are very few subjects to which even a protagonist of Mr. Santhanam's type—a protagonist of the devolution or decentralisation scheme—could take exception to. As a result of my analysis I have come to the conclusion that for the Federal List, subjects from items 1—10 cover Defence activities in various shapes and forms, and I do not know if there is anybody who can take exception to it; *e.g.*, the defence of the territories of the Federation and every part thereof, and all preparations for defence, as well as all such activities as may be conducive in times of war to its successful prosecution and after its termination to demobilization. So no one in

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this House can take objection to this sort of activity on the part of the Centre. As I said, in items 1—10 there are enumerated various items which cover more or less the defence responsibility of the Centre, and I do not know if anybody would take any exception to it.

Then again, from item 11 to item 25, there are various subjects given which are included in what is called the domain of foreign sphere and here also I do not think Mr. Santhanam or even Maulana Hasrat Mohani will take exception to that.

After this we come to item No. 28. This deals with imports and exports, libraries and museums and universities. These are certain responsibilities which are with the Centre already and which have to be with the Centre, and I do not know if anything substantial can be said against giving this responsibility to the Centre.

Then we come to items 29 to 39 which are under what we may call Communications. Here again there can be no difficulty in accepting them as a necessary part of the central authority.

In Items 40 to 53 in the Federal List, there are various subjects like Surveys, Federal Judiciary and Acquisition of Property for Federal purposes, Research, Census, Reserve Bank of India, Public Debt, Interest, Currency, etc. I doubt very much, Sir, whether these items also can be given to the various provinces. It is but meet and proper that the Union Powers Committee should have given all these subjects to the care of the Centre.

Then from Items 54 to 59 we come to some subjects regarding Trade, Economy, Insurance, Corporations, Banking, Cheques, Bills of Exchange, Patents, Copyrights, etc. These are also all-India matters. No province can be saddled with the responsibility of executing them. Similarly, if you scan the list, there is not one item to which exception can be taken. Of course Items Nos. 54 and 64 are contentious.

Item No. 54 says :—

"Powers to deal with great economic emergencies in any part of the territories in the Federation affecting the Federation."

Item No. 64 says :—

"Development of Industries where development under Federal control is declared by Federal law to be expedient in the public interest."

These are the two items which might be taken exception to by way of saying that they encroach upon the responsibilities of the provinces. But I beg to submit that there are occasions and there are situations in the provinces where the provinces themselves cannot tackle these big problems, and if we have to enjoy a growth of equitable industrial distribution in the country, then we shall have to reserve to the Centre such of the powers as are sought to be given under these two items, and therefore I do not think, Sir, there is anything which can be said against the inclusion of these items to the care of the Centre. In what Mr. Santhanam and Maulana Hasrat Mohani said, I see a case for decentralization, and when I was hearing their speeches I was asking

myself whether it is not India's age-long historical tendency of disintegration which was speaking through these stalwarts. Mr. Santhanam talked a lot about the obsession on the part of the framers of this Constitution to give more power to the Centre than was needed. Well, so far as the obsession is concerned, I think it is the other way about. It is the protagonists of decentralization who are obsessed with the fear that unless the Centre is kept weak, all the authority that they are likely to enjoy in the provinces shall not be worth the name. This sort of fear, after all, should not haunt us. We should not go on creating imaginary hobgoblins and then ask others to be afraid of those hobgoblins.

I think Maulana Hasrat Mohani talked a great deal of having socialist republics throughout the country. I think the Maulana does not know that the Soviet Socialist Republics cannot enjoy their existence in the country unless they are well knit and unless there is a central directive. After all, all of us must be prepared for the consequences of socialization of industry. Socialization of industry is not a thing which can be done in a piece-meal manner. It has to be centrally directed. It has to be guided from the Centre and then all of us have to prepare ourselves for a lot of grotesqueness in the process of nationalisation and socialization. We cannot fight shy of that. Then, in order to have a socialist society, we must at the same time have in our country a decentralised system of Government. That does not carry us very far. Therefore, I submit that the report, as it has been framed, deserves our fullest possible support, and when we come to discuss it item by item, the House will certainly find that all the criticisms that have been levelled against it do not hold any water whatsoever. It was also said that there should be equitable distribution of power and finances. It is already there. Look at the Provincial legislative list. You will find items from 40 to 58—there are 18 of them—which give all the rights of taxation to the provinces. I need not narrate all those items that are there. The Provinces can have their own land revenue taxes including assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights; then, taxes on agricultural income; taxes on lands and buildings; duties in respect of succession to agricultural land, estate duty in respect of agricultural land, duties on mineral rights, capitation taxes, taxes on professions, and so on and so on. So many opportunities have been given to the Provinces to levy taxes; and from the very lucid and learned discourse which we heard only a minute ago from Mr. Alladi Krishnaswami Ayyar we know that in no way the provincial interests have been ignored by the framers of this Report. Therefore, Sir, I wholeheartedly support this Report and I think the House on mature consideration will find that there is not one single item to which any exception can be taken.

Mr. G. L. Mehta (Western India States Group): Mr. President, Sir, when some of us wanted to participate in this discussion yesterday I had an impression that the Report that has been so ably and impressively moved by Sri Gopalaswamy Ayyangar would receive the general

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benediction of this House. Of course, we were prepared for the amendment which Maulana Hasrat Mohani moved in a bilingual speech, but the speech of Mr. K. Santhanam for whose objective attitude I have very high regard, took my breath away. Mr. President, we seem to discuss this question of division of powers as though it were a kind of tug of war or a tussle between one authority and another. It is nothing of the kind. It is a plan whereby through mutual concessions, provincial and cultural loyalties should be preserved and promote the political strength and solidarity of the Indian Union. The second Report itself has explained lucidly why residual powers should be with the Centre. Maulana Hasrat Mohani yesterday astonished us by saying that now that there is partition of India there is no reason for these residual powers to be with the Centre. On the contrary, the reason why this concession of residual powers was to be given to the Units was a kind of bargaining for communal considerations. But now that there is partition, there is no reason why the homogeneous Indian State should not have a strong Centre. There is some fascination, Mr. President, for always referring to the Union of Socialist Republics, but if you study the constitution and development of Soviet Russia, what do you find? The right of secession and other rights which are given to the Units are only theoretical rights. The whole State is maintained through the rigid and ruthless discipline of the Communist Party. And therefore there is no point in always referring to the Union of Socialist Republics in India, as though the socialist republics could be independent. As was pointed out by the previous speaker, Shri Balkrishna Sharma, even if you have socialism in this country, it is absolutely essential that there should be Central direction and initiative. We should not forget, Mr. President, that the Federation that we are trying to evolve is a Federation which has no precedent in the world, because till now through the British administrative machinery and through their treaties and agreements with the Indian States, we have had a powerful Centre in this country. In several other countries, where Federation has been built up, it has been built up through independent sovereign states coming together whereas here until 1935 the whole question was one of decentralisation and devolution. And secondly, the whole relationship between the Centre, which was under British Indian administration until the 15th August, and the Indian States is one which is unique. It is no use people getting impatient and saying that there should be complete uniformity between the Provinces and the States from the beginning. We are not writing on a clean slate, and even if the system is illogical we have to remember that logic does not always fit in with politics. We have seen, for instance, that the British who are admittedly a most illogical people, have made a remarkable success of their constitution. We have therefore, to build up the national unity of India in the best possible manner. This question of relationship between the Centre and the Provinces is considered as though it is one of mere

political mechanism and separation of powers, but what will ultimately determine these relationships are economic facts and financial considerations. May I say, with all respect, that we are too apt to derive our ideas and frame the constitutional pattern on the 19th century political ideology of Britain? There is some danger in our thinking of the Federal system or some particular forms of government in the abstract as having some special merits which make them desirable in themselves. We are always fond of quoting some models, some patterns, and arguing that as A, B and C powers do not exist in some constitution of the world, we cannot have them in our own country. This sort of imitation of political institutions, of transplantation of political institutions from other countries has always some risks. There is said to be a tribe of monkeys in Africa which copy faithfully the houses of men and then live on the outside of them instead of inside. The transplantation of political institutions is not free from this danger of copying the obvious and leaving out the essential. We have to build up this system on the conditions of our own country, not on any abstract theories. The local needs and interests in our own country require special treatment and nobody suggests that this vast country with its size and its multiple people can be ruled on a unitary basis. "Over-centralisation", a French political observer said, "leads to anaemia at the extremities and apoplexy at the Centre". Undue centralisation is not a way of achieving uniformity. In fact, we do not wish to effect uniformity in this country, but unity in essential matters. But I must emphasise that we have to be on guard against fissiparous and disintegrating tendencies which are always bound to prevail and we have to be conscious of our national unity which we have achieved and which we must maintain as one of our priceless possessions. Mr. President, it is very often argued by our British friends that one of the greatest gifts of the British Government to this country has been the administrative unity which has been given to it. There is no doubt some truth in it, but there is also truth in this that as the national movement grew stronger, the British Government encouraged in this country every kind of fissiparous and disintegrating tendency and the result is the partition we see before our eyes. We are unfortunately too prone to fall victims to these disintegrating and centrifugal tendencies. Paradoxical though it may seem, it is only a strong Centre which can build up adequate provincial autonomy and achieve decentralisation. Under the scheme which has been presented to you, it can be broadly stated that the power to regulate economic life is divided between the Provinces and the Centre and there is wide scope for provincial powers and responsibilities in the economic and social spheres. After all, we have to judge this problem from the angle of the needs of the ordinary citizens and see how best they could be satisfied and not lose ourselves in the politics of machinery and manoevure.

As a matter of fact there are only two main criteria by which we have to judge this question namely, what will secure efficient administration and what will meet the social needs of the people. These needs,

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material or cultural, can be satisfied if the various Provincial Governments are in a position to supply them, these needs which the citizens to-day demand of them.

We must also not forget, Mr. President, that economic forces and strategic considerations to-day tend to invest the Centre with large powers. If we want to organise economic development and social welfare as 'people organize for war, then the state of the future will have to be a 'positive' state, it will have to be a social service state. It will require large finances and more or less homogenous economic conditions will have to be maintained in order to achieve these purposes.

I was surprised to find my friend Mr. Santhanam objecting to planning being in the concurrent list of subjects. What else can it be? There are Central plans and there are Provincial plans and some of the Indian States have their own plans. In the Advisory Planning Committee under the chairmanship of Mr. K. C. Neogy, which submitted its report early this year, it was stated that the Central and Provincial Governments must regard development as a matter requiring joint effort in a co-operative spirit and must agree on a common policy of developing their financial resources to the utmost possible extent. As a matter of fact, planning has been a concurrent.....

Shri K. Santhanam (Madras: General): I would like to draw the attention of the speaker that I wanted planning to be dealt with in a separate chapter of the Constitution and not merely as an item. I did not object to planning being done by the Centre and the Provinces together.

Mr. G. L. Mehta: If that is the case, then I think my friend has no objection to national planning being a concurrent subject. In any case, the initiative, the direction and guidance have to come from the Centre and the implementing of such decisions will have to be with the various units. Economic, technological and scientific developments have made somewhat obsolete, the old division of powers between the Centre and the circumference. Take the T. V. A.—The Tennessee Valley Authority in the U.S.A. The success of that scheme has shown that the fear that setting up a federal agency would undermine and destroy State Government's, that is, the Unit's power and rights is a false fear; and that we can so organise as to have central production and yet have local responsibility. Whatever the constitutional set-up may be, the relationship between the Centre and the Provinces will be determined by economic forces and tendencies, and financial considerations. Commerce, trade and industry to-day as well as the economic relationship which they involve are national in scope and cannot be easily divided into Provincial and Federal aspects for purposes of regulation. Mr. President, Mr. Santhanam also said yesterday something about the mention of industries in the List of Federal Subjects. Apart from Item 6 Defence Industry, in the Item 65

there is the mention of development of industries where development under Federal control is declared by Federal law to be expedient in the public interest. This is the only rational way of dealing with this problem. As far back as 1945, in their statement on industrial policy, the Government of India have stated that industries in which a common policy is desirable should be brought under Central control. Can we not trust the future Central Government of India to decide which are the important defence industries, which are the essential industries and which are the industries which are inter-provincial in character and should be brought under Central control? In fact, in labour matters, we know that in many respects uniformity is desirable; otherwise there is the risk of one Province being very backward and another much ahead of it. Therefore there is strong case for regulation on a national basis. As regards the Indian States, for example, with some notable exceptions, the conditions regarding labour legislation and taxation, for example, do not attain the required standard and we should now try to evolve common standards in the spheres of industrial policy, taxation and labour legislation.

Mr. H. V. Kamath: Sir, is it permissible for my honourable friend to read from a manuscript?

Mr. G. L. Mehta: I am not reading: but if Mr. President, you do not desire me to read, if that is your decision.....

Mr. President: I take it the member is not reading, he has only notes before him.

Mr. G. L. Mehta: If Mr. Kamath, whose eloquence I cannot match, can speak extempore, I will invite him to follow me.

Mr. President, at no time has the importance of preserving the economic unity of India been so evident as in our experience during [illegible] the post war period. The food question, for example, the whole question of price control, the whole question of rationing, all these require development and organisation on an all-India basis which does not permit of territorial barriers or inter-provincial jealousies and for these problems we require a comprehensive and integrated economic policy, not only for our material advancement, but for our very national existence. In many spheres we require common and even uniform standards, as, for example, in respect of naval and mercantile marine training, training in the various branches of aviation, in respect of administration of higher technological institutions and of co-ordination of higher education, and higher technical education in particular; in all these respects we do require that there should be all-India policies and measures. This notion of a strong Centre or a weak Centre as Mr. Alladi Krishnaswami Ayyar observed, cannot be discussed and disposed of in merely general terms; you have to get down to brass tacks, to particular items, and then decide whether this item or function is really a function which can be performed better by the Centre or by the Provinces.

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There is only one word more which I would like to add. We must not forget that one of the primary reasons for the Provinces demanding larger powers has been the need for economic development. We have to cure economic ill-balancing in this country. We have to have regional planning, we have to see that those areas which are more backward and under-developed are given even preference; because if this is not done, the lower standards of living in those parts or the lower national income there would menace the higher standards in the other parts. In order to avoid inter-provincial jealousies, economic development on a balanced plan for the whole country is essential. But here again, what is the authority that will do that? Unless there is a national authority, unless there is an authority to allocate the resources and determine the priorities and co-ordinate these different plans, we cannot really have the development of these less developed or under-developed areas in our country.

I cannot, conclude, better than by quoting—and I hope Mr. Kamath will not object if I read a small portion at this stage—*from the report of the Royal Commission on Dominion and Provincial* Relations in Canada—

"National unity and provincial autonomy must not be thought of as competitors for the citizens' allegiance, because they are two facets of the same thing, a sane federal system. National unity must be based on provincial autonomy and provincial autonomy cannot be assured unless a strong feeling of national unity exists throughout the country."

An Honourable Member: Closure.

Sir A. Ramaswamy Mudaliar (Mysore State): Mr. President, it is with some hesitation that I venture to intervene in this debate. I should not be understood to speak purely on behalf of the States though that primarily is my responsibility. I hope the Assembly will permit me to speak on behalf of all units of the Federation and give my frank views on the subject that is now under discussion. Let me first state that as far as I have understood the sentiments of every member of this Assembly, there is no one in this House who has a feeling that the Centre should not be strong. It is not a 'tug of war' between the Centre and the Provinces. It is not a question of not appreciating the necessity of a Centre which is strong, firm, knows its mind and has no fear of executing its policy. We want such a Centre. Those of the States who have acceded to this Dominion have acceded with no mental reservation whatsoever. (*Applause.*) It is with the desire to make this Federation a success, it is with the anxiety, that this Federation shall have as far as possible a dignified place among the comity of nations, that its representatives shall rise to the full stature of manhood, that in their speeches and in their contributions at International gatherings they will speak with a voice second in authority to none at that gathering that we have acceded to the Dominion. (*Loud applause.*) Therefore, Mr. President, let there be no doubt whatsoever that there is anyone in this House representing a State or speaking on behalf of a State or representing a Unit and speaking on its behalf, who has the slightest desire in any way to mini-

mise the work of this Centre, the powers of the Centre or the authority which that Centre should exercise. If in spite of that there have been occasional voices raised regarding provincial autonomy—which for instance is a misnomer because there is no such thing as Provincial Autonomy; the powers are shared between the Centre and the Provinces—if in spite of that there have been occasional voices raised, hushed voices sometimes, clamant voices, greatly daring at times perhaps, it is only because there is another aspect of the question which has also to be appreciated by this august assembly. The obverse and reverse of the coin should both be studied before one has a full and comprehensive idea of what this scheme means and what it is intended to serve. Let me tell you, Mr. President, and I hope you will agree with me as President of the Assembly if not as a Member of the Central Government, that the headaches of Administrators of the units are atleast as great as the headaches of Administrators at the Centre. There are problems facing them which in their own sphere are acute, grave, difficult, economic problems of the first magnitude, grievances which it is hard to satisfy, ambitions, hopes, aspirations which it is very difficult to fulfil. Remember, Sir, that much of this sphere of activity which makes for the happiness of the individual man lies with the Province or the unit of administration and not with the Central administration. You in the province have the responsibility for free and compulsory education, a goal which you have put before yourself. You have the responsibility for proper medical aid, for sanitation, for promoting health, making the man live a little longer than the average life of 25 or 27 years which has been so far our lot in this country. You have the responsibility of seeing that proper conditions of housing accommodation and other amenities are provided. All that responsibility is on the Provincial administration. It is because of the weight of that responsibility that the administrators of units feel that in the separation of powers and particularly in the sphere of taxation they have not got enough resources to satisfy those responsibilities. Let us not lay the flattering unction to our soul that we are better patriots if we propose a strong Centre and that those who advocate a more vigorous examination of these resources are people with not enough of 'national' spirit or patriotism. Therefore, I would echo the sentiments that were given expression to both by my friend Sri Alladi Krishnaswamy Ayyar and by the last speaker and my friend Mr. G. L. Mehta, that what is to be discussed and thoroughly analysed is not the general proposition of a strong Centre and a weak Centre, or the division of responsibility and Sovereignty between the Centre, the Federation and the Provinces but the actual resources that are provided in this report of the Union Powers Committee. Let me say also this. I was glad to note that in the final and concluding remarks of my friend Sri Alladi Krishnaswamy Ayyar he threw aside the theoretical precedents that may be quoted from text books or Constitutions regarding Federation and asked us to apply our minds to the actual proposal in this paper and to analyse that proposal. I think that is a salutary thing to do. It is from that point of view that I venture to examine these proposals.

[Sir A. Ramaswamy Mudaliar]

Now, Sir, the cardinal feature of this, the one thing that has obsessed many of those who have studied this problem from the point of view of the unit, is its taxation proposals. I have said before and I repeat again, that the gravest responsibility is cast on the units for providing what are called nation-building activities. These nation-building activties, remember Mr. President, are the activities which build up the nation and these are the direct responsibility of the units and not of the Centre. Far greater responsibility lies on the Centre for the defence of the country. For if we lose our hard-earned liberty, nothing else is worth having. I appreciate that. I want the Centre to have all the powers necessary for that defence. I want the Centre to have all the resources necessary for carrying out its primary objective of defending the country. There is no question of that; but let us also remember as I said, there is another side to the picture that that defence activity cannot be strong unless the nation itself, the individual who makes the nation is also strong, unless they are healthily fed, unless they are properly educated, unless they are in a position to stand up as real starwart units of the nation and that responsibility again I say is on the provinces and not on the Centre.

Now, Sir, let us examine the taxation proposals, the powers that are given to the units in this paper ,to the provinces. They have been itemised from item 40 to item 58. What more does a province want? They are as many as 18 items of taxation: but let us examine them. The House will pardon me for a few minutes if I coolly and analytically examine them item by item. The first item is land revenue. Now, Sir, it is a notorious fact that for years the agitation has been not to revise the settlements and to do away with land revenue as far as possible. Prime Ministers and Ministers of Provinces elected on adult franchise having the whole weight of the elected authority behind them in the Councils, will find it very hard indeed to raise land revenue. Which of the Premiers dare do it in the face of that agitation? Land revenue, far from being an increasing asset, will, I venture to prophesy, be a decreasing asset in the future so that land revenue may not be the great asset that it is claimed to be. Let us look at item 41—Duties of excise on the following goods—alcoholic liquors, opium and medicinal and toilet preparations. Alcoholic liquor, Mr. President, with a mandate from the Centre for prohibition which most of the Provinces have already accepted, with a ban which is demanded both by popular opinion and even by the dictates from the Centre,—what is the revenue that we can expect from alcohol? Opium again is controlled by the Centre and is subject to International Conferences and regulations. It is bound to be a vanishing revenue. Let us therefore realise that 41 may as well be abolished as put on the list as a source of revenue for the province. Taxes on agricultural income, and I take that item along with Estates Duty in respect of agricultural land and duties in respect of succession to agricultural lands. When the question of the abolishing of zamindari is in the air, and I understand it is going to be an accomplished fact very soon, when division of large holdings is bound to come, when peasant proprietorship is

going to be recognized or made as far as possible feasible, taxation on agricultural land is bound to become a very poor source of revenue indeed, and if you take it along with Estate Duty in respect of agricultural land, the peasant proprietor having two acres to four acres holdings, what sort of duty are you going to collect from it?

Shri Alladi Krishnaswamy Ayyar: Estate duty even in respect of non-agricultural lands, though collected by the Centre is really a provincial source of income.

Sir A. Ramaswamy Mudaliar: I am aware of that from the report which has dealt with the question and I shall presently refer to it. Estate Duty on agricultural land is a misnomer according to me. You are not going to get it even if you are in a position to levy that tax. Then, Sir, taxes on lands and buildings, hearths and windows, I understand that this item appears in the Act of 1935 and in some tribal areas local bodies have a power to tax the hearths and windows. In any case it is not a tax from which the Provinces can expect much. This is a tax for the local bodies and not a source of revenue to the Province. Duties in respect of taxation of agricultural lands and Estate Duty I have already dealt with. (46) Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Parliament relating to mineral development Here again, limitation comes from the Federal Parliament. (47) Capitation taxes. Yes, that is a very good source of revenue if any provincial Prime Minister will levy a poll tax, a revived *jezia* which was levied in the old days. I wonder how many of the Provincial Ministers and their colleagues will have the temerity to propose such a capitation tax to their provincial legislatures. (48) Taxes on professions, trades, callings and employments. This again is taxation of a very poor kind, yielding a small amount mainly intended for local self-government institutions. (49) Taxes on animals and boats. I wonder again, with the strong pressure from agricultural and rural areas which is bound to be exerted in the new legislatures, how many will be able to tax animals and boats. (50) Taxes on the sale of goods and on advertisements. This is the one tax that is being exploited now. But I venture to say that there is a limit even to that taxation. As far as possible it should be uniform more or less in all the provinces. You will be killing the goose if you merely go on increasing the sales tax. The law of diminishing returns is bound to operate as in the case of tariff on imported goods.

The next item on the list is : (15) Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars, a source of revenue intended for local bodies. Then we have : (52) Taxes on the consumption or sale of electricity. When one is trying to develop electricity in the provinces, when one wants industries to be established by giving cheap electric power so that as many industries as possible may be established in the different provinces, to impose a tax on the sale of electricity, and what is more, to expect any heavy revenue from that is, I think, to indulge in a fanciful hope.

[Sir A. Ramaswamy Mudaliar.]

We have next, item 53. Cesses on the entry of goods into a local area for consumption, use or sale therein. This is a sort of octroi for the municipalities and other self-governing institutions. (54) Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling. Here again, betting and gambling are sought to be abolished by the provincial ministries. At any rate, public opinion is supposed to be in favour of the abolition of betting and gambling. The turf course, whose fate is hanging in the balance in more than one federating unit, is the only source of revenue from which any large income can be had. And, taxes on entertainments! Let me tell you that life is rather dull in most of the areas of the Federation and I do not know whether any heavy taxation of so-called luxuries will really ensure to the happiness of the ordinary man who, instead of going to the toddy shop for a diversion, now goes to the cinema. Item 55 relates to the rates of stamp duty and item 56 refers to collection of dues on passengers and goods carried on inland water-ways. My honourable friends from the provinces know what can be had from this source. I think very few provinces get any substantial revenue from this item.

Then, I thought, Mr. President, that the one reform that was sought to be introduced was the abolition of tolls. In many of the provinces tolls have been abolished. It will be very difficult to revive that dismal system of hold-ups which has been the feature in the past in many of the cities of our country. I venture to think that tolls will neither bring in a large revenue nor will it be feasible to adopt them in all the provinces.

Shri M. Ananthasayanam Ayyangar (Madras: General): In the States there are still tolls existing.

Sir A. Ramaswamy Mudaliar: Most of them have been abolished. There are only a few remaining and the process of their abolition is going on quickly.

Then there is item 58. 'Fees in respect of the matters in this list, but not including fees taken in any Court'. This is an unkown and uncertain source of revenue on which I have very little comment to make.

In the last paragraph, para. 6 of this Report it is said: "It is quite clear, however, that the retention by the Federation of the proceeds of all the taxes specified by us would disturb, in some cases violently, the financial stability of the Units and we recommend therefore that provision should be made for an assignment, or a sharing of the proceed of some of these taxes on a basis to be determined by the Federation from time to time." With all these ifs and buts and with the additional and subjective clause, this source of revenue is a poor source of consolation to the provinces. It is vague; it may be illusory; it is very indefinite and even that the Federation has to decide 'in such proportion and on such basis as it may determine'. I wonder how many of the Provincial Ministers will be happy at this state of affairs.

Let me now turn to the Centre. There has been a great deal of analogy put before us regarding the sources of revenue for various Federations. As Mr. G. L. Mehta has pointed out, our Federation is unique in many respects. We have to take into consideration the subsisting standards everywhere and the facts as they are and, with reference to them, for the time being at least, frame the Constitution. I have said already that there is none in this House who would object to a strong Centre with resources enough for keeping up its position. But there is one fundamental fact which has been ignored and which has come into vogue during the war period—a new method of increasing the sources of revenue. Let us remember, Sir, that while the provinces have nothing except the definite and declared sources of revenue, the Centre has one inexhaustible source of revenue, the Nasik Printing Press. I say it advisedly because I know what has been happening during the last few years. The old idea that the currency of a country should have a fiduciary backing, that there should be gold or silver or something of the kind behind the note issue has gone west in all countries. Today our currency has not got that backing. No country in the world, excepting the United States of America and Switzerland, has got that fiduciary backing which at one time was insisted upon for all paper currency. Now you can increase your currency at a tight moment. You can issue treasury bills. You can issue your own currency, I do not for a moment suggest that it is advisable to do so. It leads to inflation and all that sort of danger, and I am one of those who believe that even at present this inflation has to be brought down as far and as quickly as possible. It is the Centre alone that can bring it down. Therefore I am not in a position to advocate that. But I say this advisedly that in the midst of an emergency when they cannot turn to another source of revenue they can expand this source as other countries have done in abnormal times. But where can a province turn? At times it can float loans. But as history has shown, it cannot always lead to success. In that plight, I venture to think that provincial autonomy, even on the few subjects that have been entrusted to a province will be of a poor kind indeed. Therefore, Sir, while appreciating all that has been said in this Report about it, let me also add that there is another side to the picture which those who have prepared this Report have no doubt taken into consideration: but let me, like the Laputan flapper, conclude by saying that I wish they had taken a little more into consideration the other side of the picture. I have done.

Mr. President: I have got the names of number of members who want to speak, but closure was moved before I asked Sir Ramaswamy Mudaliar to speak.

Mr. R. K. Sidwa (C. P. & Berar: General) : Mr. President, Sir, before closure is moved, I would request you to bear in mind one thing. This subject is very important. It affects the economic condition of India, and it is important therefore that ample opportunities should be given to members to express their views. Before the closure motion is accepted, I would request the President to see whether there has been a debate representing both sides. One view has been

[Mr. R. K. Sidhwa.]

expressed and the other view has not been expressed as well as it ought to be. Therefore, Sir, I would request you to allow both sides to express their views so that the House may know what they think about this important matter.

Mr. President: I am entirely in the hands of the House. But so far as the speakers are concerned, I think they have been evenly balanced, three on one side and three on the other, and so there is no question of the speakers being on one side only. I would like to put it to the House whether it wants further discussion. The question is :

"That the question be now put"

(The motion was negatived)

Mr. President: I have given many members on this side (to the right) an opportunity to speak. On this side (to the left) I have got a few names. Mr. B. Das.

Mr. R. K. Sidhwa: I hope, Mr. President, that you will not go by the slips of names you have got. We have also to speak.

Mr. President: I will not go by the names I have got here. On a previous occasion, I said that I would not take notice of slips. If any member stands up in his seat, he will catch my eye.

Mr. B. Das (Orissa : General) : Sir, I was very glad to hear my friend Sir Ramaswamy Mudaliar, speak about provincial revenues and income. He was a party before 1933 to the distribution of taxation under the 1935 Act. It is galling to me that Honourable Members of this House should try to perpetuate the taxation arrangements under the 1935 Act. What is the basis of that Act? That Act gave all powers and all resources to a foreign Government. That devil of a foreign Government has quit India but the devil's system still continues. The Act of 1935 gave all resources to the Centre so that the Centre could rule and dominate and spend the country's resources as it liked. The Centre had no responsibility to the people of India except to send them to jails when it liked. Since the 15th of this month, we have a people's Government. This report is the fourth report that we are discussing, and I fail to observe that the Union Powers Committee's report is drafted in any democratic spirit. I am very glad that two gentlemen, Sri Alladi Krishnaswami Ayyar and Sri Gaganvihari Lalubhai Mehta, spoke of social welfare and social justice. I was pleasantly surprised to hear these two gentlemen, situated in high places as they are and situated far above the people as they are, speak of social welfare and social justice. I think Sri Alladi Krishnaswami Ayyar who is a member of the Union Powers Committee has failed to give consideration to the primary duty of the State to render social justice to the people. We are not going to give powers to the Government, to the ministry, only for them to continue the policies of the foreign administration which were expensive and top-heavy. Defence, of course, there should be defence. Will defence suit the national temperament, the national requirement of India, or will it be in the line of the capitalist Western nations like the U. S. A. and England? I do not think that at any

stage the members of the Union Powers Committee or the Union Constitution Committee had it in their minds that India's temperament will require a different orientation in the policy of expenditure at the Centre.

Sir, nobody wants charity from the Central Government. I do not want that, though I belong to the poorest province, Orissa, which had a *per capita* expenditure of Rs. 1-8-0 before the war but, there should be an equitable distribution of taxation. The Central Government, including the Governor-General, or the President who will be here in six months' time, and the Ministers, must think of their primary duty of social welfare. Nowhere in the Union Constitution or even in the Union Powers Committee's report have I found any definition of the primary duty of the Central Government. Is it only to assume all powers? Certainly not. We will have to conceive of a system of administration so that the largest amount of taxation that will come from the people should go back to the people. It should not be spent in manufacturing armaments or in manufacturing atomic bombs. Sir Ramaswamy Mudaliar analysed provincial taxation and showed how provinces are kept merely on sustenance allowances. The foreign Government at the Centre wanted only cannon fodder from the provinces. People were driven by hunger and starvation to join the army, not a voluntary army, to defend the British Empire, not so much the Indian Empire. This is the third time I am appealing for social justice and social security. It is understood from the press reports that the Union Constitution Bill is in the drafting or semi-drafting stage. It is no use Government assuming all powers. We may think we will function as the legislature, but the residuary power is vested in the Government, in the executive. I find from the Union Powers Committee's report that the tendency is that they want further powers, that they want Section 126 (a) should be incorporated in the Union Constitution Bill, so that the President, now the Governor-General, and the Cabinet will have immense powers.

Why this hankering, why this hungering in some minds amongst my colleagues here for these intense executive powers to be concentrated in the hands of the President or the Ministry? The legislature must exercise its democratic functions and the people must control through the legislature the actions of the executive which should conform to democratic principles. I do not find any spirit of democracy there, Sir.

We have received the second report of the Advisory Committee. We have received many reports so far—which is not the subject matter of discussion here. There have been recommended certain concessions to the minority communities. Who wants little concessions? We want our rights and privileges and we do not wish to hand over all our resources to a group of ministers. We do not want to hand over all our resources for carrying on the Government. What we want is that our resources should be so distributed that it should be spent for the welfare of the people. I am therefore grateful to Sri Alladi that he mentioned it and I am also grateful to my friend Sri Gaganvihari Lalubhai Mehta, ex-President of the Indian Chamber of Commerce, who thinks in terms of welfare and economies through development. He wants big capitalists to develop India. I want fifty per cent. of

[Mr. B. Das.]

the taxes of India should filtrate for the common good, to remove hunger, to remove starvation from the door of the people and the standard of living of the people should be better. But if we create classes of capitalists who will be super-capitalists we can never bring up the level of the common masses to that standard. Not that I am opposed to big industries, but I do not want the House should be enamoured of the sympathy of the big capitalists that they think in terms of economic expansion and economic development of India. The Government is our own today and no Government Member has participated in the discussions we are having today. As Members of the Constituent Assembly they ought to tell us what is their attitude, what is their line of thinking. I am not talking as a Member of the legislature, I am talking as a Member of this House. If the attitude of those who are our representatives in the Government is that the common mass, the common welfare of the people of India is their look-out, their main and primary duty, then, Sir, this Union Powers Committee's report, the underlying spirit of the report of this Union Powers Committee, should be scrapped. The Union Constitution should be so framed so that the resources of India, the intelligence of India, of the best economic thought of India, should be developed for the progressive benefit of the masses of India. That spirit I have not seen and I am very sorry that the Committee, however expert they were, however eminent they were as legal luminaries or financial experts, they have never bent their thought to it and I hope after today's discussion either the Union Powers Committee report is thrown back to the Committee again or when the Union Constitution Bill is drafted and placed before us they will develop that sense of duty to the millions.

Shri Narayan Singh (Bihar: General): *Sir, I support the motion to take the Union Powers Committee's report into consideration. A controversy has arisen as to what powers should be given to the Centre and I feel it necessary to speak something in this connection. Distribution of powers has begun and we should consider the matter thoroughly. Personally, I am of the opinion that the lesser the powers given to the Government the better it is. Sir, we have spent our whole life in fighting against a Government. We have just done away with a Government and are going to establish another. To tell the truth, the out-going Government has not left behind any good or happy impression. We are discussing here as to how powers are to be distributed between the Central and the Provincial Governments. I desire that the primary units of Government should be established in villages. The greatest measure of power should vest in village republics and then in the provinces and then in the Centre. But, unfortunately we have not as yet got village republics. The people have lesser voice in the Central Government than in the Provincial Governments. We must consider as to what powers should be given to the Government but at the same time we should also consider the measure of control the people should exercise on the Government. This requires our greatest consideration. The Central Government is vested with the authority of

*English translation of Hindustani speech.

maintaining law and order in the entire country. It is vested with the power of defending and maintaining peace and order in the country. Is it not a very wide power? This much power should be enough for the Government. This Government is vested with all authority in respect of Communications and Foreign Affairs. All these powers go to make the Centre very strong. But in spite of these wide powers, members are anxious to make the Centre still stronger. I too desire this and in fact everybody should aim to have a very strong but good Government at the Centre. Unless the Government is good, its strength will be a source of evil rather than of good to us. Take it from me that there may be a Central Government which might transfer the capital from Delhi to Madras. This is not impossible. If the Government is good and honest it may do immense good to the people. But on the contrary, if the Government is not good, it might prove very harmful. Let me put a concrete example. There was a time when Bihar was considered to be the best place for Pusa Argicultural College. Those who have special knowledge of agriculture know that the Pusa Agricultural College can be run in Bihar with more profit and advantage than in Delhi. At one time, the Central Government established the Pusa College in Bihar. But when another Central Government was formed it shifted the college to Delhi. Such are the whimsical deeds of the Central Government which you must bear in mind. You know that the cost and labour involved in running the college in Delhi is excessive. It is a well known fact that the needs of the different provinces are different. We know that the system of rationing and the Food Department are under the Central Government but how are they administered? The people in the U.P. and the Punjab do not need rice but wheat, whereas the people of Madras need rice and not wheat. The Central Government asks the people of Madras to eat not only rice but wheat also and to the people of U. P. and the Punjab it gives rice to eat. This is what the Central Government does. I too admit and want that the Centre should be strong. The stronger the Central Government the better it is. But at the same time, we should not curtail the powers of the provinces. Such powers as you think proper and those suggested by the Union Powers Committee should no doubt vest in the provinces. But in my opinion the residuary powers vested in the provinces should remain intact. The needs of one province differ widely from those of others. I need not say much on this. But while considering residual powers you will have to keep in mind that formerly when Pakistan had not come into being, we accepted the principle that residuary powers must rest in the provinces. Now it is not proper to say that it is no more necessary because Pakistan has come into being. As to whom the powers should be conceded to ensure the greater measure of benefit to the masses is a question that should be well considered. Residuary powers must vest in the Provinces. If you put them in the Concurrent List it would be quite enough. That will serve the purpose. I would appeal to you to consider this point fully. Everyone desires that the Centre

[Shri Ram Narain Singh.]

should be very strong but at the same time it should not be entrusted with matters about which it has no idea and whereby any province may be put to a positive loss.

There is one thing more in the report which appears to me unsatisfactory. I belong to a free country and I have no liking for princes but the report goes to show that the rulers of the States apprehend that their powers are being curtailed. We should act here in such a way that the princes may not entertain any such apprehensions. If they are allowed to exist there will be dissatisfaction and the work cannot be carried on smoothly. We should see that Princes are with us and whatever they do is in the interest of their people. We have the right to remove such Princes who go against the interests of the people. But we must not entertain the idea of curtailing the rights which they have been enjoying during the British rule. Such an attempt will be harmful to us. Because of these residuary powers being vested in the Centre the Princes may be apprehensive of their future. Therefore I plead that so far as possible the residuary powers should vest in the provinces.]*

Pandit Hira Lal Shastri (Jaipur State): *[I wish to say a few words about the principles laid down in the report which has been placed before us today. I do not want to enter into the discussion whether the Central Government should have more powers or less powers. Both of these views are being expressed but personally I believe that the Central Government should have sufficient powers. I want to support this report because in it the powers of the Centre and those of the provinces or the units have been beautifully adjusted. For maintaining peace in the country and for other purposes also there should be a strong Centre. But as our country is very extensive, we shall have to leave sufficient powers for the units also. I want particularly to impress that the units include our provinces and the Indian States. Hussain Imam Sahib used some strong words yesterday and urged that there should be no difference between the two. We admit that there should be no difference. We, however, know that there are many differences today and there are many varieties of States. There are differences of area, population and income. There is difference in the system of administration in the States and elsewhere. We know and understand these differences. Yet, I admit that the policy that is being adopted towards the Indian States is the correct one. It would be proper if today they are not made to agree to anything beyond the statement of May 16. We should be content with what they cede of their own accord. But at the same time, I want to point out that if the authorities of the Indian States think that with their participation in the Constituent Assembly their duty finishes and their loyalty too ceases by getting themselves included in the Indian Union, they are greatly mistaken. Because in the age that is to come, it is impossible that there should be one type of administration in one unit and another type of administration in the other.

*English translation of Hindustani speech.

It is inevitable that throughout India, in every Indian State, province, big or small, there will have to be one type of administration. It will be based on democratic principles. We are pained to find that the people of the Indian States are at present in great distress. We have declared that India has become independent and the whole country is rejoicing over it. India has surely become independent and we fully share these rejoicings. To achieve this independence and to bring it near, we have also made our contribution, however small it might be. We are proud of it. In spite of this, we are grieved to find that when India is said to have become independent, the people of the Indian States have still to achieve that status. This is very regrettable.

We were waiting for August 15 and it is past that date now. A new age is drawing and changes are taking place. How is it possible that no changes should take place in Indian States. We are to some extent confident of the farsightedness of the authorities, the rulers and the ministers of Indian States. They should understand that they will have to bend under the pressure of the times. If they do not bend, they will break. We are a little confident of this too. We have some confidence that the Central Government may help us. The previous Central Government did not help us. It helped those who helped the Government and were proud in helping to maintain it here. It helped them and did not help us. It hampered our progress as much as was in its power. That Government has ended now and its authorities too have disappeared. It is no more before us now. A new Government has now been established and we have every hope that it will help us. It may not be able to help us much but we do hope that it will not hamper our work.

But I want to tell you that I am in favour of a strong Central Government. If the States want to come in at present for a limited number of subjects, let them do so. At the same time, I want to say that when we are confident of anything, we are so after understanding it. We have this confidence not because of the farsightedness of the Indian States or because of the help that the Central Government would give us but because we find some strength in ourselves and feel strength in our arms. On that strength, I say this. The Indian rulers may like it or they may not like it. The Central Government is pledged to democracy. It may interfere there or it may not, and anything else may happen or may not happen but we know that we are not going to leave any stone unturned to establish democratic government. What we can do, we shall surely do. The strength of the people will increase so much that Rajas, Maharajas, and their allies will not be able to resist it. So the prevalent system of Government in States is not going to stay. Therefore, we need not be impatient. By saying some hard things we do not want to make the States perturbed. Nor do we want to worry them or to terrify them. It appears today that their patriotism is awakened and it is for that reason that they have come here or are to come here.

[Pandit Hira Lal Shastri]

Let them all come here. But everything is not over with their coming here. Changes will have to be made in States. After saying all this, I want to support the motion. The Central Government should be strengthened under any circumstances whatsoever. If the Government is weak, there will be no peace in the country. Maintaining of peace in the country is the greatest of all the tasks. After that, we will have the opportunity of establishing a new social order and a new economic order. Opportunity will come and all these tasks will be accomplished. Therefore, there should be a strong Central Government. The Provincial Governments should also be vested with more powers. But there is a difficulty regarding the Indian States. All the Indian States are not alike. Some of them are big and some small. They will have to be grouped so that they may form a proper unit in new India.

Whatever has been said here against strengthening the Central Government has no particular effect on me. I am in favour of a strong Central Government.]*

Mr. Debi Prosad Khaitan (West Bengal: General): Mr. President, of all the discussions that have taken place in this House the debate that is taking place on this question seems to be based more on rhetoric than on an understanding of the real needs of the country. Specially, Sir, I may say this of the eloquent speech that has been delivered by Sir Ramaswamy Mudaliar of international fame. He has covered the hollowness and weakness of his arguments by the flourishes of his rhetoric. He has forgotton for the moment the needs of the defence of the country and the requirements that become necessary for the purpose of fighting a war, whether defensive or aggressive. He has forgotten conveniently how the whole country has got to be regimented in times of war, the signs of which are already visible in the world and to which our unfortunate country, not yet fully developed, may become a victim at no distant date. I am no alarmist in this direction but I do believe that whether it be to protect our freedom, whether it be to spread education and good health or whether it be to produce more goods it is necessary that the whole country of India must be treated as one. And, each one of us, whether believing in provincial strength or in national strength, must see to it that internal peace and security and defence from external aggression is maintained and the production of goods, both agricultural and industrial, is developed, for it is only on the building up of our national wealth can we develop the nation-building activities, over which Sir Ramaswamy Mudaliar was so eloquent.

He analysed the items of taxation in the provincial list and was ironical as regards several of the items. The first item he dealt with was land revenue and reminded the House of the acquisition of landed interests by the Provinces. But has not the strongest argument in favour of that proposition been used when it was said that it was the intermediate tenure holders that take away all the income and the

*[ ] English translation of Hindustani speech.

provincial government does not get the same? Is it not to be expected that by either abolishing or purchasing the intermediate tenure-holders the provincial government will benefit more than it does at present under the existing system of land revenue?

Secondly, he laughed at item No. 42, Taxes on agricultural income. The Provinces have all along thought that they should possess this method of taxation and so long as intermediate tenure-holders existed there was not the slightest hope that the Provincial Government could get this as a good source of revenue.

He then laughed at the words "hearths and windows" but conveniently forgot the words immediately preceding them, namely "taxes on lands and buildings." Who can deny that these taxes on lands and buildings are a fruitful source of revenue not only to the provincial government but also to the municipalities for the purpose of promoting education, building good houses and encouraging other beneficial activities which are needed by the people of the provinces?

Duties in respect of succession to agricultural land is another item, which Sir Ramaswamy Mudaliar very glibly said was of no use to the provinces. But the Provinces have always thought that estate duties in respect of succession to agricultural land, which he has completely ignored, would be a fruitful source of revenue.

Taxes on mineral rights, however insignificant they may have been in the past, will become a fruitful source of revenue to a large number of provinces when our mineral resources are developed and they will prove a source of great strength to the country as a whole.

Sir, I do not propose to detain the House by going over each item in the provincial list. I would like to draw attention to the items in List I, namely, the Central sphere. Let us analyse those items to find out whether it is administratively possible to realise those taxes if they are placed in the provincial sphere and whether, if they are assigned to the provinces, the urgency of developing the economic resources of the country, would be met. Central taxation begins from item No. 77 in List I. Taxes on income other than agricultural income. It is well known that businesses exist of the same person or firm or Company in different provinces. It sometimes happens that the Main or Head Office of a company is in one Province whereas the manufacturing concern exists in another province. All these difficulties and the need for uniformity really necessitate that taxes on income can only be fixed and recovered by the Central Government. I hope, Sir, that there is nobody here who will say that taxes on income or corporation tax which is item 73 can be assigned to the Provinces. If you do that, there will be a race between different provinces as did happen in the case of certain States in America. Different rates of tax were levied in different States for the purpose of either attracting business to certain States and for preventing other States from developing the same as well as for well-developed States to get unduly more income from certain industrial concerns and other sources of income. It is therefore highly desirable that taxes on income and corporation tax should go to the Centre. In the past, the proceeds of that tax have been distributed among the provinces, and I have not the slightest

[Mr. Debi Prosad Khaitan]

doubt that it was correct. In paragraph 6 of the Report the last sentence—which again was laughed away by Sir Ramaswamy Mudaliar—says that provision should be made for an assignment or a sharing of the proceeds of some of these taxes on a basis to be determined by the Federation from time to time. "From time to time" are particularly the words at which Sir Ramaswamy laughed. But I say it must be from time to time. The needs of different provinces vary from time to time and according to the circumstances, the Central Government has to see to it that a Provincial Government is not put to any difficulty. May I remind the House of the very sad circumstances in which Bengal was placed in the famine of 1943? If provision did not exist that the proceeds of taxes could be distributed according to the needs of Provinces from time to time, what would the position of Bengal have been if the Central Government did not come to the rescue of that Province in the year 1943 and thereafter? We are on the verge of a famine in Northern India at the present moment. Who can visualise, who is there bold enough to visualise, that the needs of Northern India will not be greater in the near future than the needs of the other Provinces? Therefore, Sir, some elasticity has to be given to the Central Government for the purpose of determining from time to time the needs of the different provinces and the different units. There are some provinces who are more industrially advanced than others and it is necessary for us to see that the more backward provinces have to be brought as much as possible on a level with those who are higher developed. Their demands proportionately may in future be greater not only for the purpose of development of industries and agriculture but as well for the purpose of developing health, education and the other nation-building activities which Sir Ramaswamy Mudaliar stressed. It is no use criticising the authors of the report who have given due attention to every word appearing in the Report and then laughing at it without devoting properly the attention we are able to give and the wisdom which people like Sir Ramaswamy is able to bestow with his international experience and his experience for a long time as Member of the Executive Council of the Government of India. He referred to the Nasik Printing Press as a fruitful source of revenue for the Central Government. At that time Sir Ramaswamy Mudaliar was loud in speaking about the sterling balances of India and explaining that they were a valuable property for our country and today when the same Sir Ramaswamy Mudaliar talks of the packing away of our currency he conveniently ignores the existence of those very sterling balances about which he used to be so loud in proclaiming their advantages and selling the goods of our country to England at much lower costs than England would get anywhere else, lower than controlled prices, and by other means, and it was only at the lower prices that our sterling balances are composed of, and now he tries to draw our attention to the Nasik Printing Press, while at the same time telling us that he is not in favour of inflation. The finances of a country are of a very delicate nature. Does he know what is the condition of the finances of our country at present? Formerly, the Government of India could go into the financial market and borrow to the extent of Rs. 100 to 150 crores per year, but what is the state of things that we see a present? The Reserve

Bank in order to maintain the price of Government securities has got always to be in the market and purchasing Government securities instead of having the courage to go to the market for the purpose of raising loans. It is necessary, in the interests of our country as also in the interests of the Provinces and also in the interests of every individual which the population of the Provinces is composed of, that our Central Government which is to look after the Defence, which is to look after the development of industries, which is to help agriculture by means of irrigation, hydro-electric installations and by other methods should be strong and that we should not in any way weaken the Centre on theoretical arguments. Similarly, Sir, you will see that all the taxes that are put in the Central List are only such as can be conveniently administered by the Centre, as are necessary for the sake of uniformity in the different provinces and as are absolutely essential for the purpose of the development of agriculture, industry, etc. We have got to build a large mileage of railways, we have got to have a large mileage of roads, we have to develop a mercantile marine, we have got to develop so many things, which can only be done by the Centre and unless each one of these items is properly developed, we shall neither have our freedom maintained nor will it be possible for us to develop either education or health or agriculture or any of the other nation-building activities that we are all so anxious that we should develop. Ultimately, Sir, where is it that the proceeds of these taxes go to? Is the Central Government which is representative of the country at large, which is responsible to the Central Legislature, on which the representatives of all the Provinces will sit and determine as to how the proceeds of the taxes are to be spent—are they going to allow the Central Government to fritter away the proceeds of the taxes instead of utilising them in the best interests of the country? They will utilise them in the best interests of the country either directly or by distributing a share of the proceeds of these taxes among the Provinces, which again will be in duty bound to spend them for the uplift of the country at large. Therefore, I appeal to all my esteemed friends here not to be carried away by this slogan of Centre versus Provinces, and to consider deeply in their minds what is in the best interests of the country. Let us maintain our freedom, and therefore, build up our defence. Let us maintain our resources, build up more and more concerns so that we can develop the total wealth of the country at large. It is only on the basis of that total wealth of the country that we can build up the edifice of education, health, culture, art and all those factors which go to make the life of every individual rich, beautiful and happy. (*Cheers.*)

Shriyut Omeo Kumar Das: (Assam: General): Mr. President, Sir, after the illuminating debate that has taken place, I was not inclined to take part in the debate. But I feel I will be failing in my duty if I did not bring to light a few important points in which my province is interested. At the outset, Sir, I would rather confess that I cannot wholeheartedly congratulate the members of this Committee for the report they have produced. Sir, I agree that the distribution of powers is a very vital point in the Federal Constitution. In all constitutions it has been the bone of contention as to how to distribute the powers between the Centre and the Provinces. The question of resi-

[Shriyut Omeo Kumar Das]

duary powers was the bone of contention in the field of Indian politics for many years past. One section of the people was demanding that the residuary powers be vested in the Provinces and another section of people was demanding that it be vested in the Centre, and the Congress had to take up the position of vesting the Provinces with these residuary powers as a conciliatory gesture to a section of the population; and the altered position that the Congress has taken today is, I take it, a reaction to the situation created by unavoidable, though regrettable partition of India. But I cannot understand the logic, why after taking up this position of vesting the Centre with the residuary powers, the members of this Committee have taken up a different attitude towards the States. After having taken up that position they ought to have maintained a uniform policy for the States and the Provinces. In the provinces they have divested the provinces where there is the Government of the people, but in the States where the people have no share in the administration they have vested the autocratic rulers. To my mind it appears to be a denial of democracy.

Sir, legatees as we are, of a system of administration which was not credited in the past with having dealt fairly and squarely with the Provinces in the matter of financial adjustments, I feel today that in our anxiety to strengthen the Centre we may be adopting again the same policy of strengthening the Centre at the cost of the Provinces. Strengthen the Centre we must, confronted as we are with a situation which is volcanic on one hand and dynamic on the other. But we should not weaken the Provinces. After all it is the Provinces which have to carry out the dynamic programme of the Congress. The financial settlement which was the outcome of this anxiety to strengthen the Centre, to bring about financial stability at the Centre only, with the Units starving for funds to carry out the nation-building programme still holds good today and I do not find any change of outlook. The same policy of strengthening the Centre at the cost of the Provinces still holds good today.

Sir, I know this is not the occasion to make any special pleading for my Province, but I feel I will be failing in my duty if I did not bring to light a few facts regarding our provincial finances. My Province, Assam, has been the source of contribution to the central exchequer to the extent of nearly Rs. 8 crores annually in the shape of excise and export duty on tea and petrol. But the subvention that was given to Assam was only Rs. 30 lakhs and I do not find any change in the outlook today. I feel, Sir—and I regret having to say it—that our leaders have not yet been able to shake off the influence of the Government of India Act. Sir, with the installation of the Congress ministry not only in the provinces but also in the Centre, people are expecting a revolutionary change and they cannot be said to be unjustified in cherishing such expectations. We must free our administration, from the shackles of this octopus of red-tapism and we must devise some means to carry out our programmes speedily.

Lastly, before concluding, I must bring to the notice of this House another fact in which my Province is interested. in the list of subjects enumerated in the Federal List of subjects, I find migration and naturalisation. To my mind it appears these two subjects also should

be put in the concurrent list or the language so altered as to permit the Province to have scope of action in these two subjects. Sir, I do not know how other provinces feel, but it is sore point with us. We know how mass migration into Assam has altered the very complexion of the population. It has disturbed the relative distribution in population. With the Communal Award and the communal representation it was not fair to us to allow mass migration on a large scale and in spite of the evictions that have been carried out in our Province, I still find a large number of people who are not people of the Province but only trespassers into government lands, still hanging on to the province, living with their relatives. In this sphere, Sir, I want the members of the Committee and especially the Mover of this Motion to think more clearly on this point and permit the provinces to have some scope in this matter. If Assam which is the homeland of the Assamese people, if they cannot be protected, for myself, I think I have no justification to come to this House. Assamese people have a culture distinct from other provinces. Assamese people have a language which is a separate language and which though Sanskritic in origin has got Tibetan and Burman influences and we must protect the Assamese people. In this view of the case I appeal to the Mover of this motion to provide scope for action by the province. Sir, with these words, I support the Motion moved by Sri N. Gopalaswami Ayyangar.

Sir B. L. Mitter (Baroda State) : Mr. President, I do not want to take much time in saying a few words which I have to say because it has not been brought out in the debate so far. It has been assumed that the distribution of power in the report was made arbitrarily and some think that more power has been given to the centre than ought to have been given ; some think the provinces have been weakened and so on. I was a Member of the Committee. The Committee went into the matter of distribution of powers on a definite principle. It is this. Matters of national concern should be vested in the Centre and matters of provincial concern should be vested in the provinces. We always had this fundamental principle in mind when we made the lists. We found that the Act of 1935 was a good guide because in making the list in 1935 Act the same principle was kept in view. I suggest to Honourable Members that when we come to discuss the various items, members will kindly bear in mind the fundamental principle that matters of national interest ought to be in the Centre and matters of provincial interest ought to be in the provinces. There are some matters for which there should be a concurrent list in which both provinces and the Centre ought to have the power. My next point is with regard to the States. Some of the speakers have asked why should the States have a somewhat different position from the provinces? The reason is obvious. India is about half and half of what used to be British India and what used to be States. Do we want the States to remain in the Union or do we not? I do not think there will be any dispute here that we want the States to come into India, all those who are within the limits of what is India. Now the States agreed to come on the basis of the 16th May Declaration. Therefore if you want the States to come in and form one consolidated

[Sir B. L. Mitter]

strong India, you have got to accede to the condition on which they came in, and that is why some special provision should be made with regard to the States. Once the States come in there is no doubt that gradually the States and the provinces would approximate to each other. The States will come up. Assuming that the States are backward, to the backward portions you have got to show some indulgence. Let them come in, let them associate with you and then you will see gradually they will approximate to one uniform standard and that is our objective and thus India will be one consolidated strong India. I do appeal to members from the provinces not to mind the difference which may be made in favour of States.

Mr. President : I think we have had enough discussion now and after all if the Motion is adopted it means only that the report be taken into consideration and the details of the report will come up for discussion. So if the House permits me, I would now put the Motion to vote after giving the Mover of the Resolution a chance to reply if he wishes to.

Mr. N. Gopalaswami Ayyangar: (Madras: General): Mr. President, Sir, I do not think after this long debate it is necessary for me to take up much of the time of the House particularly because arguments taking a particular standpoint from one speaker or another have been answered by counter arguments from others taking the opposite point of view. It is unnecessary for me to refer to all the detailed points that have been raised in the course of this debate. I wish, Sir, however, to refer to one or two main considerations. One of them has just been referred to by my friend Sir B. L. Mitter viz., a distinction that has crept into the preparation of these lists as between provinces and the Indian States. I did make a reference to this point in my opening speech and I indicated the considerations that had weighed with the Committee in arriving at the conclusion that, at the inception of the Federation in any case, some consideration should be given to the different sets of conditions which prevail in Indian States and in the Provinces. It is really the correct thing to keep in view as an ultimate ideal that in due course the Indian States will approximate to provinces and the distinctions that now exist will find themselves removed by common consent. At the moment what we are interested in is to maintain the integrated political structure that has come into being now and if possible to strengthen that structure as much as we can, even if in doing so we have to make a discrimination in favour of areas with certain different sets of conditions, perhaps in favour of certain, what I would even go to the extent of calling, prejudices. Well, Sir, we have to recognize that position and the Union Powers Committee Report is based upon the recognition of that distinction.

The other big point that has been raised in the course of this debate is, I think, based almost entirely upon a delusion. That point is that by the lack of a sense of values or by reason of our not having examined the matter carefully, the Union Powers Committee has grabbed for the Centre functions and financial resources which would

more appropriately have been assigned to provinces. That I call a delusion. That arises from the fact that those who have raised that objection have not sat down to compare the Lists that have been made for the Centre and for the Provinces in the Union Powers Committee's report with the Lists that you will find, for instance, in the Government of India Act of 1935. I base this particular argument on a statement which, with considerable labour, one of my Hon'ble friends from the States has prepared and shown to me and I think I am right in saying that there is hardly a single item in the present Provincial List in the Government of India Act which this much criticised Committee, the Union Powers Committee, has transferred to the Federal List. (*Hear, hear.*) If I mention that point it is not because I want to claim credit for the List that exists in the Government of India Act. It is possible for these critics to say that even what you find in the Lists attached to the Government of India Act is not based upon solid, convincing considerations, that the Union Powers Committee should have gone further and if possible transferred some of the items on the Federal List of the Government of India Act to the Provincial List. I wish however only to say at this moment that the criticism that we have grabbed power for the Centre in matters which so far we have considered to be within the sphere of the provinces has no substantial foundation.

The next point that I wish to refer to is the one elaborated at length by an Hon'ble Friend of mine for whose administrative experience and oratorical gifts I have very great regard. That friend started by examining the list of taxes in the Provincial sphere and tried to belittle and pooh-pooh the items you find there. I think the case he tried to make out was that the distribution of the taxable sources between the Centre and the Provinces in the Union Powers Committee's Report was deliberately calculated to reduce the resources of the provinces and to increase the resources of the Centre. That view, I think, Sir, is far from the real state of the facts. As a matter of fact we have included in the Provincial List all the items of taxation and revenues which you find in the Provincial List of the Government of India Act today. In this connection I must say that it was rather extraordinary that while my Hon'ble Friend spent so much time and rhetoric on belittling these various individual items in the Provincial list, he did not devote a reasonable proportion of that time and rhetoric to the items which we have included in the Federal List. There also we have only repeated what is to be found in the Government of India Act. He seems also not to have attached sufficient importance to a matter to which the Committee has drawn very prominent attention in the last paragraph of its Report. The Committee recognises that the sources which are listed for the benefit of the Centre might produce revenues which would be perhaps on present standards more than adequate for the needs of the Centre. In any case it recognises the fact that, if the Centre retains the entire proceeds of all the Central taxes that are mentioned, it might result in upsetting the financial equilibrium of the Units and therefore has made the specific recommendation that steps should be taken for the assignment wholly of some of these sources to the units and for the

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sharing of other sources between the Centre and the Units periodically at the discretion of any authority which in the course of the framing of the Constitution we may decide upon establishing for that purpose.

Shri T. Prakàsam (Madras: General): May I just point out, Sir, that the Government of India Act was rushed through Parliament at a time when the country was carrying on fierce agitation? (Voices: 'Mike, mike').

Mr. N. Gopalaswami Ayyangar: I might for the benefit of the House repeat what Mr. Prakasam has drawn attention to. He seems to contend that the 1935 Act was rushed through Parliament, that this country had no adequate opportunity to put its views before Parliament and that therefore it is not an Act which we should have taken as a model for imitation. All that I would say in reply is that the 1935 Act was the last act in a series of proceedings which started I think about 10 or 8 years earlier and that the proposals that are contained therein passed through the hands of various Commissions and Committees and finally through a Joint Parliamentary Committee on which representatives of this country sat and that the whole scheme was evolved after the expenditure of an amount of labour and thought which we do not ordinarily associate with the framing of legislation of that kind.

Now, Sir, it may be that what was produced at the end of it all did not satisfy us in certain respects, but we certainly could not complain that that legislation was prepared in a hurry or rushed through Parliament in a hurry. We may not accept all that is contained therein.

What I am interested in pointing out in reply to the debate is that there is nothing that we have done in the Union Powers Committee's Report which you could attack in reason. We have heard a great deal about the resources of the Provinces being poor, about the resources of the Centre being inexhaustible and so on. I do not however remember having heard from any speaker in this House any constructive suggestion as to what we might have added to the Provincial List and what we might have subtracted from the Federal List.

Now, Sir, I do agree that as the report stands it does not give the House a full picture of what will be the final financial provisions in our new constitution after it comes to be fully drafted. I have more than once told the House that the scheme that is in contemplation is that this whole question of the resources that could be tapped in this country, the distribution of those resources between the Centre and the units and the machinery by which that distribution should be effected, either all at once or from time to time, should first be examined by an Expert Committee, and perhaps later on vetted by the Union Constitution Committee and finally that scheme would come before the House so that those who are the authors of that scheme might have the benefit of constructive suggestions from Members of this House. As it is, Sir, we have only put before you the items which we wish to include in these three different lists. We have also told you that it is not intended that these items of revenue resources or tax resources should be exclusively appropriated to the Centre. We contem-

plate that certain items should be wholly assigned to the Provinces. We contemplate that others should be shared equitably between the Centre and the Provinces. Where then, Sir, is the justification for the criticism that the Union Powers Committee has failed to do justice to the Provinces in this connection? I for one am unable to see any ground for that criticism. Sir, I do not wish to take up the time of the House any longer. We have had a most interesting debate on this very vital issue relating to the Constitution and I hope that Honourable Members will recognise that during the quick changing events that have taken place during the last few months that Committee has done a piece of work which if it does not extort admiration will at least elicit some measure of approval (*Cheers*).

Mr. President: Shri Gopalaswami Ayyangar's motion is:—

"Resolved that the Constituent Assembly do proceed to take into consideration the Second Report on the scope of Union Powers submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 25th January, 1947."

The motion is adopted.

An Honourable Member: I press for a division.

Mr. Hussain Imam (Bihar: Muslim): May I suggest the procedure which was sometimes followed in the Council of State, that is, in the old days minorities were asked to stand up in their places to express their dissent? From it you could make a note and not involve the whole House into going into the lobby.

Maulana Hasrat Mohani (U. P.: General): What is the number of those who will remain neutral?

Mr. President: To my mind it is perfectly clear that there was a large majority in favour of the Resolution. Now those who are opposed to the Resolution will please stand up in their places.

(Six Honourable Members stood up.)

Mr. President: So I think my reading was quite correct. There are six opposed to it.

The motion is adopted.

Maulana Hasrat Mohani: I am in favour of the Resolution, but as I suggested a large percentage of those who have not voted have been neutral.

Mr. President: I think I am quite satisfied that the House is in favour of passing this Resolution and there is an end of the matter.

Mr. M. S. Aney (Deccan States): Mr. President, as you have granted the poll and asked those who are against, it is necessary for you to ask those who are in favour of it.

Mr. President: I do not think it is necessary, because it is quite clear and I have already declared. But if the House insists I will ask the Members who are in favour of the Resolution to please stand.

(An overwhelming majority of Honourable Members stood up.)

Mr. President: It is now quite clear.

An Honourable Member: Those who are neutral?

[Mr. President]

Mr. President: It is not necessary to know the neutrals. We shall take up the Report now. We have to take up the amendments. The first amendment is by Shri D. P. Khaitan.

Mr. Debi Prosad Khaitan: Mr. President, Sir, I sent notice of this amendment because in the Resolution of Shri Gopalaswami Ayyangar as it is worded only the words "Second Report" are mentioned. In the circumstances there was a little vagueness as to whether the first Report would come into consideration or not. But in the speech that Shri Gopalaswami Ayyangar delivered in moving this Resolution he made it clear that in spite of the occurrence of the words "Second Report" only, the House will be entitled to consider the first report also. In the circumstances, Sir, I do not think there is any necessity for my moving the amendment that stands in my name.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, on a point of order. I submit that the House has accepted only the Resolution as it has been proposed. It has not accepted the Hon'ble Member's speech in support of the Resolution. It is an accepted constitutional proposition that when a Resolution is passed, any speech made contrary to it or inconsistent with it, is not necessarily accepted but is rather rejected. The Resolution says that the "Second Report" be taken into consideration while in the speech it was suggested that that part of the first report which is not inconsistent with it may be looked into. The so-called introduction of the first report is extremely qualified and it is that part of the report which is consistent with it which in the opinion of the Hon'ble Member may be looked into. It comes to this, to my mind, that the first report is out of date and has been discarded and only that part of it only which is consistent with the "Second Report" may incidentally be taken into consideration as a relevant document.

And then again, the amendment which was tabled should have been moved before the Resolution was put to the vote.

Mr. President: It has not been moved.

Mr. Naziruddin Ahmad: Yes. As the amendment has not been moved, it simply falls through. If the Honourable Member who tabled the amendment is happy with the idea that the first report holds the field, let him be so. But the constitutional position is that the first report is not formally before the House.

I have a second reason for making this submission. Those members who unfortunately were not in the House from the very beginning, that is, those members who came here as the result of the statement of June 3rd, have not yet been supplied with a copy of the first report. That also indicates that the first report is not before the House as it is constituted today.

In these circumstances, I ask for a ruling as to whether the first report is before the House by reason only of the fact that the Honourable Member in a qualified manner said that it may also be referred

to. I submit that it could be taken into consideration by way of argument in an incidental manner and not as a substantive Report properly before the House to be voted upon.

Mr. President: Has the honourable member received a copy of the blue book? It contains the first report also.

Mr. Naziruddin Ahmad: Unfortunately, that packet was sent to my address in the Constitution House where I was during the last Session. I have since shifted to the Western Court. In spite of repeated letters and messangers to the Constitution House I have failed to recover the packet.

Mr. President: It is unfortunate that it did not reach him. He will be given another copy.

We have to proceed with the consideration of the Report. There are certain paragraphs in the Report and we have got appendices which contain the lists. I have got notice of certain amendments suggesting that certain paragraphs should be substituted by something else, that certain additions should be made to certain paragraphs and certain fresh paragraphs should be added. It seems to me that the report as a whole is now before the House and the Report is the Report of the Committee. I do not know whether it is open to the House to substitute a paragraph of the Report. Perhaps, the House can say that the principle embodied in a particular paragraph should be substituted by certain other principles or that the substance of the Report should be altered in a particular manner. I do not know if it is correct in form to say that a paragraph of the report should be substituted by something else.

Any way, that is only a technical matter. We have now to proceed to the merits of the report. We shall have to take the report paragraph by paragraph and if any amendments have to be made by the members, I will call upon them to put forward their suggestions of which they have given notice in the form of amendments. We take up the report paragraph by paragraph. Mr. Gopalaswami Ayyangar, will you take up the report para by para?

Mr. N. Gopalaswami Ayyangar: Sir, I did not quite catch the suggestion that you were good enough to make. Is it your idea that I should read these para. by para?

Mr. President: No. I do not think it necessary that the paragraphs should be read.

Mr. N. Gopalaswami Ayyangar: May I make an alternative suggestion which would perhaps be simpler and this is a procedure which in the legislatures we follow in regard to bills. After the motion for taking the report of a Select Committee into consideration has been passed, the procedure is that the President says, the question is that Clause 1 do stand part of the bill, and then amendments are moved. If I may suggest the procedure, Sir, you may refer thereby to the number of the paragraph in this report and say that that para do stand part of the report. If there is any amendment, it may be considered and the para put to the vote.

Mr. President: I will follow that procedure. We shall take up para by para. I have not got notice of any amendment to para 1.

Shri K. Santhanam: Sir, I have got a suggestion to make. I think we should take the items first and take the body of the report finally, because it is only a summary of the items. After we have disposed of the items, we can then discuss the various paras. If we take up the items first, it will save a lot of time. If we take the paras first, there will have to be a repetition of much of what has been said these two days.

Mr. M. S. Aney: Mr. President, the Report is in two parts. The first part gives us the principles on which the three lists in the second part are prepared. Now, to take up the analogy which has been referred to by one of my friends there, of considering a bill when it comes before the House, it must be noted that the bill generally has got one statement called the Statement of Objects and Reasons of the bill. Then there is the bill. The bill is considered first. At the end, after the bill is accepted, we accept the Objects and Reasons as only giving us the grounds relevant to understand the bill and nothing more than that. We need not consider this report clause by clause. This gives the general principles on which the three lists are made. We have to examine these lists in the light of the principles enunciated there. Therefore, the proper procedure would be to consider the items first and at the end of it, if we find in dealing with the lists that some principles in the paragraphs have undergone a change, then, we may make any change as regards the other part of the report.

Mr. N. Gopalaswami Ayyangar: Sir, I entirely agree with Mr. Aney that if we strictly followed.....

B. Pocker Sahib Bahadur (Madras: Muslim): On a point of order, Sir, I would like to know whether the second report alone or the second report along with the first report, is before the House for consideration.

Mr. President: The second report is under consideration. It incorporates much of what was contained in the first report. If there is any difference, it is only the second that is under consideration now.

Mr. N. Gopalaswami Ayyangar: If we followed strictly the procedure relating to bills, I agree entirely with Mr. Aney that what he proposes would be the right course. The particular suggestion I did make was due to your having already ruled that we were to consider the report also para by para. We have passed a motion that the report be taken into consideration and that by itself could be deemed to be sufficient approval of the House for taking the report under consideration and we have only to deal with the items in the list. You may have perhaps a general debate at the end when you can review the entire course of discussion and arrive at any conclusion you please. If, therefore, you are pleased to direct that we should consider the report para by para then the procedure I suggested may be adopted.

If, on the other hand, you think that the report has already been taken into consideration, there is no need to go into the detailed paragraphs of that report and we may take simply the items and dispose of them.

Mr. President: I think we had better go to the lists. We shall take the items in the lists one by one and when this is finished, we may take up the paragraphs if necessary. Perhaps, it may not be necessary at all. We shall take this up tomorrow. The House is now adjourned.

The Assembly then adjourned till Ten of the clock on Friday, the 22nd August 1947.

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1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Price 5 Annas

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 22nd August 1947

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

MEMBERS TAKING THE PLEDGE

The following Members took the Pledge:

1. Mr. Prafulla Chandra Sen (West Bengal: General).
2. The Honourable Pandit Govind Ballabh Pant (United Provinces: General).

REPORT OF THE UNION POWERS COMMITTEE—*contd.*

Mr. President: We shall now proceed with the discussion of the items in List I in the Appendix to the Report of the Union Powers Committee. We shall take up item No. 1. I find there is notice of amendment by Sir Ramaswami Mudaliar, Sir V. T. Krishnamachari, Shri Srinivasan and Shri Venkatachar.

ITEM 1

Sir V. T. Krishnamachari (Jaipur State): Mr. President, Sir, I move:

"That in item 1, all the words after the word 'thereof' be deleted."

My reason is that the words beginning from "generally" are unnecessary. They are explanatory. I understand they have been adopted from some judgment of the High Court of Australia. It seems to me to be unnecessary to add these descriptive words to the list of subjects. That is the reason why we have set down this amendment on the order paper. We have no objection to the sense of the words, but we consider that in the list such descriptive explanations are out of place.

(Messrs. K. Santhanam, Naziruddin Ahmad and T. A. Ramalingam Chettiyar did not move their amendments—No. 5 in List No. 1, No. 4 in List No. IV and No. 6 in List No. I.)

Mr. President: There is no other amendment to this item of which I have notice. If anyone wishes to speak on the amendment which has been moved he may do so.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President Sir, the amendment which stood in my name is the same as the one which has been moved though it is in a different phraseology. I submit that the words proposed by the amendment to be deleted are unnecessary. The expression "defence" in item No. 1 is, I think, comprehensive enough. No further descriptive words are necessary as will appear from numerous other items in the List—both in the List attached to the Report and the List attached to the Government of India Act. I will cite one or two instances: item No. 3 —"Central Intelligence

[Mr. Naziruddin Ahmad]

Bureau''; No. 6—''Defence industries''; No. 7—''Naval, Military and Air Force works''. There are numerous other similar items. The items are described merely by name. According to a well-known principle applicable to such cases, all incidental or ancillary powers necessary to give them full effect, are implied in these expressions. They are cryptic expressions which explain themselves. Everything necessary to those subjects is implied. In these circumstances, the proposed deletion will bring the item into line with many other similar items in the list. So, in order to secure uniformity as well as to remove much surplusage, I support this amendment.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, it is not unusual to elaborate the points that come in these lists. I would request the attention of the House to item No. 33 in List No. 1 of the Government of India Act, 1935. Corporations are a Central Subject. ''The incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State. . . . . etc.''. That is the language used. They have said what they mean by the word 'corporation'.

In various countries where 'defence' alone was entered as an entry in the federal list, they have taken this matter to a court of law. Differences arose and the courts had to interpret the word 'defence'. Here I have got a case (Australian Bread Case 21 C. L. R. 433) where Griffith C.J. said the word 'defence' includes all acts of such kind as may be done in the United Kingdom either under the authority of Parliament or under the Royal Prerogative of the Realm. Among others it includes preparations for war in time of peace, and any such action in time of war as may be taken for the successful prosecution of the war and the defeat of the enemy. Sir, this explanation was given, or this decision was arrived at after elaborate discussion in a court of law. Should we once again go through this travail? I think, Sir, if the Honourable the mover of the amendment has no objection to these items being there, the inclusion of them may be allowed. The only objection is that it is not elegant. The language is not elegant. It is not a piece of literature that we are enacting here. It is a piece of law. It is better to be more specific. Wherever it is possible to avoid doubts, let us avoid them.

Mr. N. Gopalaswami Ayyangar (Madras: General): Sir, the reasons for the inclusion of the words, whose omission has been suggested, have been recognised by the Hon'ble the Mover himself, and have been elaborated by Mr. Ananthasayanam Ayyangar. I have nothing to add to those reasons. I think that on the whole it is better that we should not incur the risk of courts possibly taking different views upon a question of that sort. As we are all agreed that the substance of what those words indicate must be included in the item of 'Defence', it is much better that we do include those words in this item. If the Hon'ble the Mover has no objection, I would suggest his withdrawing his amendment.

Mr. President: The mover of the amendment wishes to withdraw. Has he got the leave of the House to withdraw it?

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

Item 1 of List I—Federal Legislative List, was adopted.

ITEM 2

Mr. President: Again there is an amendment in the name of Sir V. T. Krishnamachari.

Sir V. T. Krishnamachari: Mr. President, Sir, I move the deletion of item 2. My reason is that requisitioning is temporary acquisition, and there is item 43—Acquisition of property for purposes of the Federation, which covers what is substantially implied in item 2. It seems to me that there is unnecessary duplication. It is for that reason that I move the deletion of item 2. In times of war, item 1 confers all powers of requisitioning that may be needed.

Mr. President: There are certain other amendments also.

I think we had better discuss this because this amendment suggests the deletion of the whole item. So any other amendments which are only for adding something or subtracting something may be taken up later on. Does anyone wish to say anything about this amendment?

Mr. K. M. Munshi (Bombay: General): Mr. President, the amendment, Sir, is based on a little misconception, if I may so put it. The power to requisition has been construed to be included in the Defence power, and is a prerogative of the Crown in England. In India the question arose during the last war when the Central Government exercised the power of requisitioning, and the point was raised that requisitioning during the war was a Defence power, and Defence, not being a subject which was within the legislative competence of the Central Legislature, the Defence of India Act could not include the item of requisition in it. This was largely conceded in some of the High Courts and Parliament had even to intervene at a stage. Now, no doubt therefore, the Union, possessing the powers of defence under item 1, would have the power to requisition immoveable and moveable property during war, but in the period of peace or during the time when preparations are being made, it is doubtful whether the power to requisition would be included in the Defence power. This item No. 2 has been specifically mentioned to obviate any doubt on this question. As already pointed out by my friend Mr. Ananthasayanam Ayyangar earlier during the debate, there have been numerous decisions on some of these items and we do not want the same point litigated over and over again in our courts for the satisfaction of the litigious public and members of my profession. Therefore it is necessary that this power should be specifically mentioned—including training and manœuvres—since even during peace time, the power for requisitioning may have to be used. That is the whole object of it and I am sure my Honourable Friend Sir V. T. Krishnamachari will withdraw his amendment.

Shri Himmat Singh K. Maheshwari (Sikkim & Cooch Behar Group): Mr. President, Sir, during the war, requisitioning was resorted to in many places as a special measure, but it involved great hardship to many individuals, and the power was abused in a very large number of cases. During war time such abuse may be tolerated, but it is now proposed to grant this power of abuse to every local 'Hitler' who is

[Shri Himmat Singh K. Maheshwari]

likely to use such power against every person whom he may dislike. I suggest, Sir, that the House should throw out this item as a safeguard for the freedom and security of the common man.

Mr. Hussain Imam (Bihar: Muslim): Mr. President, the power to requisition lands for the purpose of defence is one of the most essential powers which we should give to the Centre in order to maintain the stability and strength of the Union. But there is no doubt that what the last speaker said is a fact. Lands were requisitioned and they continue to remain requisitioned, two years after the termination of the war even today. There is no doubt that there has been a great deal of mis-management by the former government. But the mis-management by the former government is no reason why we should not trust our own representatives to do better when the time comes.

I have come here to make a suggestion that as requisitioning of lands for the purpose of defence is an essential thing, it should be in the central list. But I want to suggest that this requisitioning should be also for the purposes of peace. There are times when lands have to be requisitioned in times of peace. For instance just now we have got the case of the Central and Provincial Governments having to deal with the great influx of refugees from the different areas. For dealing with such problems there should be power for the requisitioning of property by the State. I would therefore like to point out to the draftsmen the need for including an item of this nature in the concurrent list.

Shri H. Chandrasekharaiya (Mysore State): Mr. President, Sir, in my opinion the amendment moved seems to be a very reasonable one. The necessity for the proposed entry has not been explained by Mr. K. M. Munshi who thought fit to oppose the amendment. He referred to a case which happened during the time of the war, but he did not cite any case which happened during times of peace. The requisitioning, as put down here does not even require the previous consultation of the Province or the federating State. Even in the Government of India Act of 1935 there is no entry of this kind in the Federal List. In fact, whenever lands have to be acquired for the purpose of the Federation, Section 127 of that Act provides that it should be done under certain conditions and with payment of compensation. But as the entry now stands, it implies requisitioning any land straightaway and in an arbitrary manner even without referring the matter previously to the concerned Unit. For all these reasons, I pray that the House will kindly accept the amendment proposed by Sir V. T. Krishnamachari.

Shri M. Ananthasayanam Ayyangar: Sir, the mover of the amendment did not take exception to this item on the ground that it is unnecessary or inconvenient, but only on the ground that it is covered by a later entry, item No. 43 in the list, "Acquisition of property for the purposes of the Federation." In his opinion, that is a more comprehensive item, and therefore this item No. 2 need not find a separate place as a separate entry in this list. That is all the objection. I, however, feel that there is necessity for such a separate entry. Requisitioning of property for defence purposes is a different

thing from requisitioning them for general purposes of the Federation. In the one case it is restricted to land and in the other it can be all kinds of property.

Then again, whenever property is acquired for any particular purpose, the nature of the purpose also varies. Sometimes for carrying on dangerous or noxious trades some property is requisitioned and specific powers are given to the Local Boards for this purpose. Therefore, I say there is need for distinguishing defence purposes from the other ordinary purposes. By providing it in item 43, pointed attention of the Assembly is drawn to this distinction.

The last speaker said that under the Government of India Act of 1935, the Provincial Government could acquire property for the purpose of the Federation on payment of compensation. I am sure a similar provision will be made here also, and the property of an individual would not be acquired without compensation. We have, in the Fundamental Rights already laid it down that no property would be acquired without the payment of adequate compensation. Therefore, this item may be allowed to continue in the list.

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. President, Sir, it is practically admitted that this item is covered either by item No. 1 or item No. 43 of the Federal list. Now the question that has to be considered is the retention or deletion of item No. 2, whether, even if it is superfluous, we should not keep it there. My view is that, in view of the fact that this particular detailed item is also covered by item No. 1, there is no necessity for mentioning it as a separate item. Moreover, if it is retained as item 2 it will give rise to difficult questions in the construction of item No. 1 whether it does cover many other points also. It may be argued that since one detail is particularly mentioned as item 2, other details are not covered by item 1. Therefore it is not at all advisable to retain this item 2 as a separate item in view of the fact that it is really covered by item No. 1. Therefore, I submit, Sir, that this may be deleted.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. President, I submit that neither item No. 1 or No. 43 covers this item No. 2. A country like India with a large army will have to keep its Army fit and the training will have to be given in different geographical and climatic conditions. For that purpose, the Army will have to be requisitioning land in various parts of the country and in various parts of the year. So such power for the Centre is very necessary because Defence is a Central subject. So I oppose the amendment.

Mr. Tajamul Husain (Bihar: Muslim): *[Mr. President, item 2 is that the Central legislature has got the power of acquisition and requisition of land anywhere it likes in the Indian Union for defence purposes. On that, an amendment has been tabled by my able friend that this item should be removed. Mr. President, I am unable to understand the logic as to why this amendment has been moved. Suppose there is an invasion of India, or Travancore which has acceeded to the Indian Union, and it becomes necessary to establish a front there, then would you not give the Central legislature power to requisi-

*[English translation of the Hindustani speech.

[Mr. Tajamul Husain]

tion land? I am astonished at this amendment. In my opinion the Central legislature should be given the power to requisition land for manœuvres.]*

Mr. Naziruddin Ahmad: Mr. President, Sir, I certainly support the spirit of item No. 2, namely, that the Centre should have power for requisitioning land for its own purposes, but I should submit that the clause is unnecessary. It has been fully covered by item No. 1. There is a great distinction between 'acquisition' of land, which is taking complete title, and 'requisitioning of land, which is taking possession for temporary use. I don't think therefore that item No. 43 will cover this item, but I submit it is covered by item No. 1. Once we elaborate each power, there will be no limit at which we should stop. There are a very large number of items which are expressed merely by catch words. So if we further define this power, a large number of ancillary powers will have also to be defined. That I submit would be introducing a vicious principle. 'Defence' is also covered by item 15 relating to 'War and Peace'. If there was any doubt, item No. 15 will remove it. For all these considerations, I submit that item No. 2 is unnecessary and redundant and should be rejected.

Mr. N. Gopalaswami Ayyangar: Sir, I think it is conceded by the House that in any case under certain circumstances the Federal Legislature should have power to make laws regarding requisitioning of lands for defence purposes. What has been put forward in favour of the amendment is that that power could be traced either to item No. 43 or to item No. 1.43, as the House knows, refers to acquisition of land for purposes of the Federation and, in connection with the interpretation of a section of the Defence of India Act which related to requisitioning of land, some High Courts in the country took the view that requisition did not come under acquisition. It was therefore necessary, especially after the war was over and for the purpose of completing what remained to be done in regard to properties which had been requisitioned during the war, to make statutory provision to enable the Centre to deal with requisitioned property for a limited period of three years. But we are now considering a constitution which is to be of permanent duration.

Now, Sir, it will be conceded that requisitioning will in any case be necessary under conditions of emergency, whether war or otherwise, for defence purposes including purposes of training and manœuvres. Now when we reach a stage when such a power has to be taken, the Federal Legislature should be clothed with authority for making that law. Now if that power could be inferred from item 1—I have already said that doubts have been expressed about it being inferred from item 43—if that power could be inferred from item 1, it may be that item 2 is altogether unnecessary; but we have got to reckon with the fact that, while a number of other items which we have mentioned in detail could be brought under item 1, we have still enumerated them in this list. Now what is the harm in adding requisitioning to the number of those detailed items when you concede that requisitioning should come under the general power of defence? We shall have this power in the Federal list. Whether that power

]* English translation of the Hindustani speech.

should be used and whether a law should be made during peace for enabling requisitioning to be done is a matter for the future Federal Legislature. It might be that in the law which may be proposed for requisitioning we may insert conditions which would not allow requisitioning to be done unnecessarily or when the conditions do not warrant it; but that in certain circumstances requisitioning may not be necessary in peace time is not a ground for our eliminating this item from the list altogether. And there is another point I want to mention. Assuming that the contrary view is taken and it is held that requisitioning of land does not fall within the purview of item 1 of this list, what will be the position? The position will be that it will be an item which is not to be found in any of the 3 lists and therefore will become a residuary item and the power of making a law for dealing with that item will be with the Centre. I quite appreciate the position that, in view of the distinction that we are making in respect of the quantum of residuary power and the allocation of powers between the provinces and the Centre, if this item becomes a residuary item, in the case of the States, the States might claim jurisdiction to legislate for this item. But what will be the effect of the amendment which has been moved by the representatives of the Indian States? Supposing it is removed, then the power is necessary for the federation under certain circumstances and in certain emergencies. Then, whatever arguments we may have from the Centre's point of view will be concentrated on demonstrating that requisitioning is a very necessary item in the general power of defence and therefore we would still, I think, have to legislate on them. Therefore I think the balance of considerations is in favour of leaving this item alone in the Federal list and, when any legislation is attempted on this particular item, then perhaps this House can take steps for ensuring that it is not used in circumstances which do not warrant it. I therefore suggest that this amendment may not be pressed.

Sir V. T. Krishnamachari: The main point the amendment seeks to make is that whatever powers of requisition may be needed in times of war and emergency must be conceded and are conceded under item 1. But public interest requires that powers in times of peace must be exercised under the Land Acquisition Act. The question is one of public policy—whether we want the power of requisitioning to be exercised in times of peace when there is no war or emergency. The object of this amendment is to prescribe that in times of peace, the ordinary Land Acquisition procedure should be used where lands are required for purposes of training and manoeuvres.

Mr. Tajamul Husain: Sir, I rise to a point of order. After the mover has replied, can there be any speech? Nobody has any right of reply. I want a ruling from you, Sir.

Mr. President: I thought Mr. V. T. Krishnamachari was going to withdraw the amendment. That was the reason for allowing him to speak.

Sir V. T. Krishnamachari: Sir, I do not press the amendment.

Mr. President: My anticipation was correct. He does not press the amendment.

Mr. Tajamul Husain: Then I withdraw my point of order.

Mr. President: The amendment is withdrawn. I take it the House allows him to do so.

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

Mr. President: Then there are certain other amendments of which notices have been given.

(Messrs. K. Santhanam, Mohanlal Saksena, M. Ananthasayanam Ayyangar and N. Madhava Rao did not move the amendments standing in their names.)

Mr. President: I do not think there is any other amendment. So I put the original item to vote now.

Item 2 was adopted.

Item 3

Mr. President: Then we take item 3. I do not think there is any amendment to item 3.

Shri K. Santhanam (Madras: General): Sir, I want to speak about item 3. The Central Intelligence Bureau is not a proper subject. Central Intelligence should be the subject. Why should we have a legislative power confined to the Bureau? I do not see there is any need for restricting the scope. I would make a suggestion that the last word may be dropped and that Central Intelligence may be a proper subject.

Mr. President: Mr. Gopalaswami Ayyangar, that seems to be a reasonable suggestion.

Mr. N. Gopalaswami Ayyangar: We shall consider it when settling the text.

Mr. President: Then I put item 3 to vote.

Item 3 was adopted.

Item 4

Mr. President: Then we proceed to item 4.

(Messrs. K. Santhanam, H. V. Pataskar, and Naziruddin Ahmad did not move the amendments in their names.)

Shri Himmat Singh K. Maheshwari: Sir, I move:

"That for item 4, the following be substituted:

'Preventive detention in a Province for reasons of State connected with defence and external affairs.'"

In List I of the Government of India Act of 1935 what is now item 4 forms part of item No. 1 and reads as follows: "Preventive detention in British India for reasons of State connected with defence, external affairs or the discharge of the functions of the Crown in its relations with Indian States." It will be noticed, Sir, that this particular item related to British Indian provinces only and not to the Federating States, the reason obviously being that if preventive detention were to be the exclusive concern of the Federal Government in

the areas of the Indian States, the States themselves would find it impossible to take prompt action to prevent trouble in times of emergency. The present item seeks to extend this power to all the territories of the Federation and to that extent it makes the position of the States unduly difficult and it also involves unnecessary interference with their normal administrative machinery.

Another point, Sir, which I wish to bring to the notice of the House is that this item only vaguely describes the circumstances in which preventive detention may be ordered. The circumstances are summarised in the words "for reasons of State". But this might include almost anything under the sun. I suggest, Sir, that it is desirable to state clearly which particular reasons of State should justify preventive detention. I have therefore suggested that such detention should be ordered only in connection with defence and external affairs and not in connection with other matters of which there will be plenty to be dealt with by the Federal Government.

We were told yesterday that List I in the present Report is almost identical with the corresponding Federal Legislative List in the Government of India Act, 1935. Now, although this particular item does find a place in the List, it has been substantially altered to the disadvantage of the States and also to the disadvantage of the subjects in as much as it seeks to spread its tentacles almost to an unlimited extent. I hope, Sir, that the framers of the Report will find it possible to reconsider this particular item and modify it in the light of the suggestion I have made.

Shri Gopikrishna Vijayavargiya (Gwalior State): *[Mr. President, I oppose the friend who has just moved the deletion of this amendment on the ground that it is not in the interest of the States. I think the argument is wrong. As we are going to make a Federation, the States are also in duty bound to protect it. When we are going to establish a strong united administration and a strong federation, do they intend to shelter those in States who go against this Federation? We have to check all those who are disloyal to the country whether in provinces or in the States and the same law should be applicable everywhere.

I come from a State and submit that we gladly cede rights to the Federation and we must. This item must remain.]*

Sir B. L. Mitter (Baroda State): Mr. President, I oppose the amendment moved by Shri Himmat Singh Maheshwari. The reasons he gave in support of the amendment tend to separate the States from the rest of India. The item is: "Preventive detention in the territories of the Federation for reasons of State." If the States form an integral part of the Dominion of India, then the reasons which make it necessary for the Government of India to take action should apply equally to the States as to the rest of the Dominion. An act of the State is never resorted to unless it is in the interests of the Dominion as a whole. That being so, I do not see why any distinction should be made between States and the rest of the Dominion when an important measure is con-

[ ] English translation of Hindustani speech.

[Sir B. L. Mitter]

sidered necessary in the interests of the Dominion as a whole. Supposing some mischief is brewing in a State and it is necessary in the interests of the whole Dominion that preventive detention should be exercised in respect of that person, if the Central Legislature do not have the power to restrain such mischievous activities, then the whole object of preventive detention would be defeated. I oppose the amendment.

Mr. Naziruddin Ahmad: Mr. President, Sir, I should submit that I heartily desire that all the States should accede to the fullest extent possible so that they should be treated exactly as the Provinces. But, for that purpose I think we should proceed in a legal and constitutional manner. I belive that the States have acceded on three broad matters, Defence, Foreign Relations and Communications. Mr. Ayyangar informed the House that their Instruments of Accession consist of about 18 or 20 items on which they have acceded. Constitutionally, therefore, I submit that the jurisdiction of the Federation over the States would extend only to those subjects on which they have acceded. Beyond that it would not be constitutionally proper or possible to extend our authority to the States. As I have already submitted the States should fully accede, but I should also think that that should be effected through negotiations and on a voluntary basis. It is the mutual appreciation and mutual self-interest and mutual dependence for the safety and welfare of India as a whole that full accession should follow. I have therefore this difficulty of accepting item No. 4 in its fullest implications. I should therefore ask the constitution experts in the House, of whom there is quite a galaxy, to consider the matter dispassionately from a constitutional point of view and give their decision. Then the alleged difficulty pointed out of a trouble brewing somewhere in an Indian State and that the Federation should have full power to deal effectively with that trouble and the Federation should therefore have sufficient power to deal with a problem like that, but I think that that would contravene the conditions upon which the States have acceded. If it is for defence purposes or any of the purposes for which the States have acceded, there would be no difficulty. But, however justifiable we might feel in acting in the way suggested, it would be beyond our constitutional power, at any rate, constitutional propriety, to act in that way. I should therefore ask the Honourable the Mover of the Report to consider that; and I am sure it will receive adequate and effective consideration at his hands.

The other difficulty which I have felt on this item is a smaller one It is about the last word in this item, namely "State". This item has been taken from Item 1 of List 1 in the Government of India Act and the expression has been bodily lifted from that item of the Government of India Act. But in this report we have also used the word "State" in a different sense, namely, the Indian State. There may thus be some possible confusion. At any rate the use of the same technical expression in two different senses is inartistic and should be avoided. There may not be any actual misunderstanding resulting from this, but I should suggest that the Drafting Committee should consider the selection of some other suitable word, so as to prevent any possible confusion with the word "State" as it is understood in the

Indian State. I should therefore consider that on the whole the item should be carefully considered and we should not proceed on mere grounds of convenience or expediency, but rather on the ground of justice and commonsense.

Mr. Hussain Imam: Mr. President, I rise to oppose the amendment, because it wants to create differentiation between the Units of the Federation; that the Provinces should be subject to the jurisdiction but the States should not be subject to jurisdiction. This is a formula to which I cannot agree, but I do fear that the item itself goes counter to the fundamental rights we hope to secure. Preventive detention is nothing but a method of arbitrary detention without trial. If you want to put a man under trial, then he will come under the ordinary law. No specific provision would be necessary for that purpose. It seems to me that we are trying to revive Regulation 3 of 1818 and similar measures that were taken. No doubt in modern democracy powers of this nature are given, but they are given under circumstances of grave menace to the peace and tranquillity in the country. It was only in times of war that regulations of this sort were passed in European as well as American countries. But in times of peace no reason of State should prevail and cause a person to be detained without his having committed an overt act. I therefore feel, Sir, that if this power is to be given, it should be qualified in such a manner that this right of preventive detention should remain with the Centre only in times of war and other grave menace to peace and tranquillity of the country. In ordinary times, a power of this nature would be misused. Human nature being what it is, it is necessary that we should provide some method whereby you can avoid the misuse of power. Power brings with it intoxication and it is rather difficult to imagine that it will not be misused in time of peace. I am therefore suggesting not its deletion, but elaboration so that proper precautions may be taken that it may not be misused.

Pandit Lakshmi Kanta Maitra (West Bengal :General) : Mr. President, Sir, this item No. 4 "Preventive detention in the territories of the Federation for reasons of State" is a very important question involving an important principle. I have listened very carefully to the speech just delivered by my Honourable friend Mr. Hussain Imam. I can only tell him that I am one of those who have systematically opposed the preventive detention in any shape or form in the past. Mr. Hussain Imam rightly apprehends that this provision might lead to abuse and might be an instrument of oppression.

May I tell him that the situation is now completely changed? We must realise that we are going to start a new State of our own, an absolutely independent State, and that the Central Government, the Union Government must be armed with certain powers which can be used by it, not for frivolous reasons, but for the interests of the State itself. The amendment which has been moved unduly restricts the scope of the powers that are sought to be conferred by item No. 4.

[Pandit Lakshmi Kanta Maitra]

Mr. Hussain Imam has referred to Regulation III of 1818. I am sure he would realise that when the Britishers first came into this country and wanted to stabilise their Government here, in the very early stages of their occupation, they thought it necessary to have some legislative provision, some powers by which they could stop persons, potential mischief-makers from doing any mischief to the State. Therefore, from their point of view, in the early days of the British Rule in this country, it was thought necessary that a legislative provision like Regulation III of 1818 should be provided to give the Executive certain powers to deal with mischief-mongers. Now, why does he apprehend that the Central Government, the Union Government which we are now going to set up under the New Constitution should abuse this power? I know no human agency, no human machinery is perfect. But you have to give the Central Government certain emergency powers which have got to be exercised by them in the interests of the Dominion itself. If there is an abuse as my honourable friend apprehends, because Regulation III of 1818 in the later stages of the British Rule came in for a lot of abuse—I know a lot of people were deported and civil liberties were suppressed—but now we have got our own State, our own Government elected by the people with a President elected by the people and of the people; and besides, it must not be forgotten that in the Fundamental Rights we have provided a relief of Habeas Corpus. There is no danger of civil liberties being trampled under ruthlessly and carelessly as it has been done in the past under the British Rule. If, for instance, in any part of the federation, in any territory, not necessarily in a province, in a Native State, some persons were found by the Government, on reliable information, out to create mischief that would not only be detrimental to the best interests of the Dominion, but to peace, do you think that the Government should sit quiet and not move in the matter, simply because there has been no overt act on their behalf which would bring them under the clutches of the law? There may be fifth columnists who may be secretly working in the Dominion itself, in any part of the territory; they may be in the pay of a foreign Government; they may even be in the pay of a rival Government of any Dominion Government in India. Therefore, in the present set up of things, when we have within the geographical borders another independent State, it is all the more necessary that such a power should be provided in the constitution to be utilised by this Union Government when it thinks it necessary. It is quite possible in the scheme of things that one Native State may be conspiring against another and probably by no ordinary test, because of no overt acts, he could be brought under the clutches of law. If the Indian Government had reliable information that his activities were such that he would endanger the peace between two different parts of the Indian territory itself, certainly the Central Government must have power to intervene to stop that mischief-making.

Therefore, it is not a question of civil liberties being in danger; it is a question of high reasons of State, and reasons of State should take precedence over everything. Therefore, I oppose this motion and support the original proposal for inclusion of item 4 in the federal list.

Mr. Tajamul Husain: Mr. President, Sir, I support item 4 and oppose the amendment. In my opinion, Sir, powers must be given to the Central legislature to detain for reasons of State any person or group of persons. Now, Sir, supposing in a province or in a State, there is a group of persons who is in conspiracy with a foreign enemy power with a view that that foreign enemy power may invade India, what should we do at that time? Therefore, the Central legislature must have power to detain that group of persons at once and prevent it from doing further danger and mischief, and there should be no open trial. What would happen in an open trial? Many State secrets, weaknesses of the Indian Defence may be out. The enemy may know at what point we are weak. After all, you know, Sir, the technicalities of the law. Accused persons who are guilty may be acquitted. Therefore, with these few words, I strongly support that item 4 should be retained in its original form and the amendment should be opposed.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. President, Sir, my justification for intervening in this debate is to point out that this item in this list is included in order that the Federal legislature might legislate in regard to this item. If we understood that, all the objections raised have no place at all in this discussion. But, as preventive detention is abominable to a free country, to free citizens, some honourable members have sounded a note of warning that the Government coming into power, or rather newly coming into power, as the Honourable Mr. Hussain Imam pointed out, might get intoxicated with power, and in its enthusiasm, especially when it happens to be a party Government, in its enthusiasm to hold its power by all means, it might override the fundamental rights of the people not to be deprived of their liberty without trial. So I do not think that Mr. Hussain Imam was opposed to the granting of powers to the central legislature in this regard, but he only sounded a note of warning.

And now, Sir, even at this juncture it is necessary for us to see that, in future when the central legislature thinks of passing a legislation unnecessarily, undue advantage may not be taken by it on the ground that this item has been placed on this list; and the criticism of an Honourable Member with regard to the speech of Mr. Hussain Imam is not correct; as I have stated, he only sounded a note of warning. And it is also not correct to say that there is a provision of *habeas corpus* and that it will save the people from unnecessary and illegal harassment. If legislation of the sort of the 1818 Regulation was passed, *habeas corpus* would have no place at all. Therefore we cannot seek any comfort from the provision of *habeas corpus*. While I submit that a state must be armed with powers to detain persons in certain circumstances like war or grave menace to tranquillity, it is always necessary that provision should be made even in legislation in regard to the fundamental right and liberty of a citizen to be tried by competent courts of law and to be declared guilty or not guilty, if that is possible. Therefore while I am not opposed to the inclusion of this

[Mahboob Ali Baig Sahib Bahadur]

item, I along with Mr. Hussain Imam would sound a note of warning that in future when any legislation is sought to be made in regard to this item, free Indians should not be deprived of their liberty in free India.

An Honourable Member: The question may now be put.

Mr. N. Gopalaswami Ayyangar: Sir, I take it that the main amendment before the House under consideration is the one moved by my Honourable friend Shri Himmat Singh Maheshwari. That amendment seeks to limit the power given by this particular item to preventive detention in a province for reasons of State connected with defence and external affairs. Now the difference between this amendment and the original item has two aspects. One is that the orbit of this detention should be limited to reasons of State connected with defence and external affairs; and the second is that the federal legislature should have power to make laws for detention only within the limits of a province. Perhaps I might dispose of the second of these limitations at once. Assuming that, for reasons of state it is necessary to detain a person, is it the intention of the Honourable Mover of this amendment that, if such a person escapes to the territory of an Indian State, the Federation should not get him detained there or have him brought back to British India and detained there? Now, after all, the States also form part of the territories of the Federation, and, if detention of persons for reasons of State is necessary, that detention should be possible in any part of the area of the Federation. Therefore, Sir, this does not seem to accord with the spirit in which the States ought to accede to the Federation.

Secondly, as regards the limitation in respect of matters connected with defence and external affairs, I am not sure if we should limit them to these two particular cases. There are matters which may not be connected with defence or external affairs in connection with which it may be necessary for the Government of the Federation to detain particular individuals. It may be a thing connected with the very existence of the State, but it may not relate to defence or external affairs. It would probably conduce to the disappearance of conditions which may threaten the existence of the State if we had power to control movements of people of that sort for a short while and kept them in detention for the purpose of ensuring that the atmosphere improves until the time arrives for our setting them free. In any case if it is necessary to have preventive detention powers in the case of persons in matters connected with defence and external affairs, there are other matters also in connection with which such power is necessary. Therefore, Sir, on both these grounds I do not think this amendment deserves to be supported by the House.

Then there were certain other matters referred to by other Honourable Members. Mr. Naziruddin Ahmad warned us against taking power which may not constitutionally be correct in view of the fact that the States might be acceding only in respect of a certain limited number of subjects. I am sure, Sir, that care will be taken to see

that any powers that we take in this regard do not encroach upon the free sphere in which the States will be allowed to act after they accede to the Federation. That is a matter relating to the wording of the clause and I can assure Mr. Naziruddin Ahmad that what he has said in that connection will be borne in mind.

Then I will refer to one or two points mentioned by my Honourable friend Mr. Hussain Imam. One of these suggested that preventive detention is something which will go against fundamental rights. Now fundamental rights are going to be enumerated in our constitution; and if we put preventive detention in the federal list, any laws that we make in respect of this item could not conflict with the rights that we shall recognise in the body of the constitution. Therefore, Sir, the legislation that we shall have the power to make cannot conflict with fundamental rights as recognised in the Constitution.

Then there was another matter. I think it was not Mr. Hussain Imam but Mr. Naziruddin Ahmad who brought it up. He referred to the use of the word "State" in the expression "reasons of State". The Honourable Member appears to have thought that in some way or other that word "State" might get confused with Indian States. I wonder if I have got his point all right. But, if I have got his point all right, my only answer to that point is that the word "State" has nothing to do with Indian States. Unfortunately in the Government of India Act, from which, as he very properly said, we have lifted these expressions out into our own list, the word "State" has been printed with a capital letter. I think, that perhaps was a mistake. If we substitute a small letter for the capital letter, "reasons of state" would have the meaning which it was intended that that expression should have. I therefore, Sir, oppose this amendment and would ask the House to accept the item as it is.

Mr. President: The question is:

"That for item 4, the following be substituted:
'Preventive detention in a Province for reasons of State connected with defence and external affairs'."

The motion was negatived.

Mr. President: I shall now put the original motion to the House. The question is:

"That Item 4 in List I—Federal Legislative List—be adopted, *viz.*:
'Preventive detention in the territories of the Federation for reasons of State'."

The motion was adopted.

Mr. President: I might draw the attention of the House to the fact that we have gone through only four items and we have taken one and a half hours. We have got 84 items in the List. At this rate it will take five days to deal with the items. I do not wish to rush anything but I would urge Members to go as fast as they can.

Item 5

Shri K. Santhanam: I would request your permission to move the amendment in my name in List V in place of the one down in List 1.

Mr. President: Yes.

Shri K. Santhanam: Sir, I move:

"That in Item 5 the words 'for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units' be deleted."

I need not take up much of the time of the House. These words are unnecessarily restrictive. The Federation should be able to use its forces for all legitimate purposes, including such work as is assigned to it by the United Nations or in pursuance of Treaties and Agreements. Therefore the deletion of these words gives a freer scope for the employment of our Military, Naval and Air Forces. I hope it will be accepted.

Mr. President: Motion moved:

"That in item 5 the words 'for the defence of the territories of the Federation and for the execution of the laws for the Federation and its Units' be deleted."

Sir V. T. Krishnamachari: Mr. President, I would like to move amendments 11 and 12 to Item 5 in List I.

Sir, I move:

"That in item 5, after the words 'Air Forces' the words 'borne on the Federal establishments' be inserted."

This is a formal amendment. My next amendment relates to the second portion of item 5. Sir, I move:

"That in item 5, for the words 'the strength, organisation and control of the armed forces raised and employed in Indian States' the following be substituted:

'The strength of the armed forces raised and employed in Indian States and the organisation and control of such part of the forces as may by agreement be earmarked for service with Federal Forces.'"

You will find a reference to this, Sir, in paragraph 5 of the report. The intention is to maintain all the existing powers of co-ordination and control now exercised over such forces. We agree that all the powers at present exercised should continue to be exercised by the future Federation, but we have attempted to reproduce the existing position in the amendment as we have tabled it. I shall be glad if Mr. Gopalaswami Ayyangar will examine this and see whether this reproduces the existing position. We feel that this reproduces it more accurately than the original item, and we shall be glad if Mr. Gopalaswami Ayyangar will examine this and employ such language as will correctly reproduce the existing position.

Mr. H. V. Pataskar (Bombay: General): Item 5 as it stands at present restricts the use of Naval, Military and Air Forces for two specific purposes, namley, "employment thereof for the defence of a territory of the Federation and for the execution of the laws of the Federation and its Units.....".

As that employment is confined to these two objects, I have given notice of an amendment that the scope should be widened by adding

"for implementing treaties and agreements with other countries, for maintaining peace and security inside the territories of the Federation."

The object of giving notice of this amendment was to widen the scope, because our country may make treaties with other countries and these forces might have to be employed for implementing those treaties. I

find now that my friend, Mr. Santhanam has already moved an amendment which is wider in scope than mine. He wants all those words that refer to the use of these forces to be deleted. If that amendment is carried, there is no point in moving my amendment. I therefore request that you allow me either to move it or not after Mr. Santhanam's amendment is disposed of one way or the other.

Mr. N. Gopalaswami Ayyangar: I straightaway wish to say that we propose to accept Mr. Santhanam's amendment.

Mr. H. V. Pataskar: Therefore I need not move it.

Mr. S. V. Krishnamoorthy Rao: Sir, my amendment is in two parts.

"That in item 5, the words 'and its units' be deleted; and for the words 'raised and employed' the word 'maintained' be substituted."

the latter part is a merely verbal one and I do not press it. As regards the first portion, the Indian Union consists of the two parts, the democratic provinces with elected presidents, and the States with their autocratic dynastic governments. If the Federation undertakes to use its army to execute the laws of these States, then it will be a negation of democracy. I do not think any democratic government will allow that to be done. It is to prevent this that I tabled my amendment. But Mr. Santhanam's amendment certainly fulfils this purpose which I have in my mind, and since that amendment is accepted, I do not press mine.

(Shri V. I. Muniswami Pillay and Shri D. Govinda Doss did not move their amendment No. 5 in List III.)

Mr. President: These are all the amendments which we have notice of. The original items and the amendments are now open for discussion.

Shri Ram Sahai (Gwalior State): *[Mr President, as a representative of one of the States, I oppose the amendment moved by Sir V. T. Krishnamachari. The amendment implies that some forces should remain under the States and others under the Centre. But at the same time, the language of the amendment includes the word "agreement". By this, the little importance that the power regarding forces which the Centre had is lost. I wish to tell the House that the independent authority enjoyed by the Centre over the defence forces is also put to an end by this amendment. The condition of the armies in the States is so bad that they cannot be used for defence whenever they are needed. Some training is necessary. And hence it should be completely under the control of the Centre. I thereore oppose the amendment.]*

Shri Yudhisthir Mishra (Eastern States Gp.): Mr. President, Sir, I support the amendment which has been moved by my Honourable friend Mr. Santhanam, to item 5 of list I. The words sought to be deleted indicate how the naval, military and air forces of the Union

[ ] English translation of Hindustani speech.

[Shri Yudhisthir Mishra]

Government would be employed. It is proper that the scope of the employment and the function of the forces should be dealt with by the future Union legislature and that it should not be restricted by the Constituent Assembly. Sir, I take objection, in particular, to the words "for the execution of the law of its units". It would be disastrous for the people of the States if for the execution of the laws of the States, as they stand now, the forces of the Union are employed. The laws in the provinces would be framed by the Provincial Legislature which will consist of the representatives of the people. But, Sir, there is no guarantee that in the Indian States the people of the States would have any hand in the framing of their laws. As long as the people of the States do not enjoy democratic rights they will fight against the autocracy of the rulers and also against the laws framed to suppress the movement of the people. In many of the States, especially in Orissa States, in the name of public safety, ordinances have been passed to suppress the movement of the people who are fighting for their freedom. It would be a tragedy if the forces of the future Union Government be employed to suppress the people who are fighting for what the Congress and the Indian people fought for the last 27 years. With these words, Sir, I support the amendment moved by Mr. Santhanam.

Mahboob Ali Baig Sahib Bahadur: Mr. President, Sir, the House is under a great handicap because the Honourable Member who gave notice of a certain amendment—Mr. Pataskar—has not actually moved his amendment. He has on the other hand said that if Mr. Santhanam's amendment is passed he would not move his amendment. I do not know, Sir, whether such a procedure is allowed. In any case, members who intend to support the amendment given notice of by Mr. Pataskar do not clearly see how his amendment is covered by that of Mr. Santhanam. It may be contended that according to Mr. Santhanam's amendment the significance of the word "defence" is so wide that it covers the cases mentioned or contemplated by the amendment of Mr. Pataskar. But Mr. Pataskar's amendment is to this effect that the Union forces must be enabled to be employed for implementing the treaties and agreements with other countries. The government might enter into defensive and offensive treaties with other countries. In such cases, power must be given to the government to employ the forces for the purpose of implementing these treaties. Well, of these activities on the part of the Indian forces are included in the word "defence" which I consider is the real implication, then, I think Mr. Pataskar's amendment may be allowed to be moved. The other instance mentioned by him is for the maintenance of peace and security inside the territories of the Federation. Here again it may be contended that the word "defence of the territories" may include the maintenance of peace and security inside the territories of the Federation. There is a little difficulty here, Sir. For instance, if the Federal Government wants to send its troops into a native State—I mean an Indian State, I am

sorry, excuse me—whether this legislature has got the right to legislate in regard to that, whether the Union Government has got the right or the power to send these troops to the Indian States for the maintenance of peace and security. Supposing there is a big riot or rebellion or some sort of thing happening in an Indian State, the question is whether the Central Government or the Union Government would be entitled to send troops to the Indian States. These are the instances covered by the amendment given notice of by Mr. Pataskar. As I said, the House is under a great handicap in this respect. The Mover stated that if Mr. Santhanam's amendment is passed, he would not move his. This hypothetical way of moving an amendment is rather peculiar; in any case, the mover of this amendment or those who want to support it may be given a chance to move the amendment even after Mr. Santhanam's amendment is passed.

Mr. A. P. Pattani (Western India States Gp.): Mr. President, the amendment moved by Sir V. T. Krishnamachari requires considerable attention, especially as the mover has said that the intention of that amendment is to stabilise the position as it is today. So far as I know, there are three types of forces employed in Indian States. One is the Field Service Troops, second is the General Service Troops and the third is the Internal Security Troops. I know that before the last war, there were some States that had forces which were not affiliated or joined to what is known as the Indian States Forces scheme under which these three categories of forces which I have mentioned came. But even those States, who were maintaining these forces outside the category of the Indian States Forces scheme, obtained equipment and arms through the Central Government. To that extent, Sir, I submit to the House that whether the forces were Field Service Troops, General Service Troops, Internal Security Troops or troops outside any of those organisations, the strength and equipment of those troops was determined or rather permitted, or any other term we may like to use, by the Central Government. If my interpretation is correct, then I submit, Sir, that the recommendation of the Committee as it stands is the correct position and I trust the Mover will look at it in that light.

B. Pocker Sahib Bahadur: Mr. President, Sir, I entirely agree with the Honourable Mahboob Ali Baig Sahib when he says that the House is under a very serious handicap in understanding the position as regards the motion and the various amendments before the House. We do not know, Sir, which are the amendments for consideration before the House. Of course, there was the motion and there was Sir V. T. Krishnamachari's amendment. There was also Mr. Santhanam's amendment. Mr. Pataskar's amendment also is there, I take it, because although he said he was not moving it if Mr. Santhanam's amendment is carried he has moved it conditionally. Whether that procedure of moving an amendment conditionally is permitted or not it is for you, Sir, to say.

Mr. N. Gopalaswami Ayyangar: I thought, Sir, that Mr. Pataskar said he was not moving his amendment.

Mr. President: Yes; he did not move it.

B. Pocker Sahib Bahadur: Supposing Mr. Santhanam's amendment is not carried inspite of that, is it to be taken that Mr. Pataskar declined to move it?

Mr. President: Whatever the reason may be, it is always open to a member not to move an amendment of which he has given notice. For whatever reason he may not choose to move it. In this case Mr. Pataskar did not move his amendment, whatever reasons may have influenced him.

Mr. H. V. Pataskar: Sir, I would like to speak a word on this amendment, not my own.

Mr. President: He has not finished yet.

B. Pocker Sahib Bahadur: Even now Mr. Pataskar has not said definitely whether he has moved his amendment or has declined to move it.

Mr. President: As I have said, the amendment has not been moved and it is not before the House.

B. Pocker Sahib Bahadur: If that is so, I would submit—of course, it is a matter of procedure on which you have to give a ruling—that if an amendment has been given notice of and if the Honourable Member who has given notice of the amendment has spoken on that amendment and has not said whether he does not move it or he would like to move it conditionally—whatever it is—I would request you to give a ruling as to whether it is open to any other member of the House to move the same amendment, with the President's consent. In view of the uncertainty of the present position, I would request you, Sir, to give me permission to move the amendment as my amendment, if the fact is that the amendment is not before the House; if on the other hand, the amendment is before the House, I would like to support the amendment and give my reasons therefor.

Mr. President: I think under the rules it is open to any member to give notice of an amendment and later not to move it for any reason he likes, but if he has not given notice of an amendment he cannot adopt somebody else's as his own. Mr. Pataskar's amendment has not boen moved and it is not before the House.

B. Pocker Sahib Bahadur: Mr. Pataskar's reason was that Mr. Santhanam's amendment answered the point and it is only on that ground that he has declined to move. I would say, Sir, that Mr. Santhanam's amendment does not answer the purpose and it would leave the whole clause incomplete. Therefore I would submit that it is necessary that the clause should be such as to include at least the purpose of Mr. Pataskar's amendment. Conditions will arise sooner or later in this country in which India has to enter into alliances with neighbouring States in order to defent herself against some foreign

aggression of some kind or other. For instance it is very likely that India may have to enter into a Defensive alliance with the neighbouring State of, say, Pakistan or Afghanistan in order to defend herself against an aggression from Russia or some other country. Well, it is to provide for such a contingency that Mr. Pataskar's amendment has been proposed and it is necessary that specific provision should be made to enable the Federation to legislate on that. Therefore I would submit, whatever may be the technical position as to whether the amendment of Mr. Pataskar is before the House or not, it is very necessary that some provision should be made in order to make legislation under that subject possible for the federation.

Mr. H. V. Pataskar: Sir, I would like to make it clear first of all that I did not move the amendment that stands in my name and the reason that I mentioned for doing so was that the amendment moved by my friend Mr. Santhanam has wider scope. On that point I would like to offer some further remarks. Now, Sir, from the clause under discussion the words "the raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof", remain while the rest of the words from that clause 'for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units' are omitted by the amendment which has been moved by my friend Mr. Santhanam. Naturally the object with which I had given notice of my amendment was that it was mentioned in item 5 that these Naval Forces or Military Forces or Air Forces were to be used for two specific purposes which were mentioned *viz.*, for the Defence of the territories of the Federation and for the execution of laws of the Federation and its units. Naturally I thought it was necessary that such Forces ought to be used for the purposes which were mentioned in my amendment. It is quite possible that we may have to enter into treaties with other countries and in that case we may have to make use of these Forces for implementing them. When only two purposes were mentioned, in the clause, I thought it was necessary that the other two purposes which to my mind were important should also be incorporated but when I found that my friend Mr. Santhanam moved an amendment by which he wanted to omit all reference to any purposes leaving it open to the Federal Government or the State to use them for any purposes whatsoever, I naturally thought that that amendment gave a wider scope and therefore my amendment became unnecessary. Now, therefore, to all those friends who may have any doubts I would like to say again that "The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof" naturally means that they could be employed for any purpose connected with the State. If necessary it may be further made clear by adding the words 'for purposes of State' after the words "employment thereof" and if the mover has no objection I would suggest an amendment to Mr. Santhanam's amendment to substitute the words 'for purposes of State' in

[Mr. H. V. Pataskar]

place of the words which have been omitted. Of course, even if these words are not there the employment thereof will be entirely in the hands of the State and in their discretion. Therefore I think the purpose for which I wanted to move my amendment does not any longer exist for the simple reason that now it is open to the State to use these forces for any purpose whatsoever. With these words, I would submit that I do not wish to move my amendment.

Mr. M. S. Aney (Deccan States): Mr. President, Sir, there are two amendments which are under consideration of the House. One is by my Honourable Friend Mr. Santhanam and the other is by Hon. Sir V. T. Krishnamachari. This item which is under discussion deals with the question of Defence which in my opinion is of paramount importance and the House should very carefully consider the terms of this particular item. The whole structure of your Defence, its object and purpose, are to depend largely upon what you decide now. The first part of this item deals with the Federal Forces and the second part of it deals with the Forces maintained in the Indian States. I shall deal with the two Forces separately. In the first part the powers with regard to raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the Defence are claimed by the Central Government, for the Federal Forces and in the second part which deals with the strength and organization of the Forces raised and employed in the Indian State, powers in regard to that are also claimed by the Central Government or by the Federal Government. Mr. Santhanam wants to delete the portion which relates to the definition of the purposes for which the Federal Forces are to be employed. Mr. Santhanam's amendment is that we should not make any reference to the purposes for which the Federal Forces are to be employed. I want to invite the attention of this House to this particular point because it has some importance in my opinion in the interest of the units themselves. There are two objects which have been specifically stated here for which the Federal Forces could be employed. The first object is for the Defence of the territories of the Federation and the second is for the execution of the law of the Federation and its units. Now Defence of the territory is unboubtedly an incontrovertible matter and everybody can easily understand the use of the State Forces for that. For the second purpose it may not be easy for the Central Government to make use of that force unless specific provision is already made. Whether it is necessary to make use of that Force or not for that purpose is a matter which you must very carefully consider. Suppose a law of the Federal State is not obeyed by the people or a law of a unit is not obeyed by the people of the unit, are the Federal Forces to go and help those units in restoring law and order and enforce obedience of the people to the laws of the Federation and the units? When you ask the units to join the Federation, when you ask the States also to become units, you indirectly take a responsibility to help them if necessary in the maintenance of law and order and those conditions are to be fulfilled. The Central Government should therefore have the power of allowing the

Federal Forces to be used for those purposes at the time of emergency. It is necessary in my opinion to specify the purposes. There may be other purposes also for which the State Forces may be required and if we are not prepared to specify all those purposes, we may add at the end 'and for such other purposes as the State may determine from time to time.' In order to cover all those cases of emergencies when State Forces can be used some specific provision should be made. The Federal Forces exist not only for the purpose of Defence of the Federal territories from foreign invasion but also for the protection of the parts or units of the Federation from internal revolution as well. The use of the State forces for the latter purpose is very important and even necessary, in my opinion. Under the conditions under which our new Government is going to function it is necessary that some such power should be specifically given to the Federal Government for using those forces for the latter purpose. As regards that, I think that Mr. Santhanam is one with me. The omission of the words defining purposes will, according to him, widen the powers of the State. I fear that it may give rise to narrow interpretations of the powers, creating difficulties in times of emergencies and thereby endangering the safety of the State. I therefore say that although I am not opposing the amendment it will be wise if he does not press his amendment and brings some other amendment such as, adding at the end the words 'for such other purposes which the State may think fit and proper'. Such an amendment will cover all cases which he has in view in bringing forward this amendment. I am only making these observations for the consideration of the House and of the drafting committee later on.

Now, coming to the second amendment which my Hon'ble Friend Sir V. T. Krishnamachari has moved, I appeal to Mr. Gopalaswami Ayyangar who is nursing this law and doing all the piloting work to see whether, in view of the Instruments of Accession which each State is making, suitable changes could not be made to suit the conveniences of the States. I am very anxious, if we are going to give any definite assurance in the name of the Government of India to the States, to see that we do not give the impression that we are encroaching upon the power of the States in making this Schedule. I appeal to him to examine these provisions carefully and see whether the wording as it is found here is likely to be construed as encroaching upon what has been reserved for the States in this matter. It is a matter that should be settled by negotiation between him and the representatives of the States such as Sir B. L. Mitter and others. Their object also is the same, *viz.*, to create a strong force for the Federal Government for defending the territories of this country, for maintaining law and order and for preventing convulsions inside the country. These are my suggestions which I hope Mr. Gopalaswami Ayyangar and the House will consider.

K. T. M. Ahmed Ibrahim Sahib (Madras: Muslim): Sir, on this occasion I would like to draw your attention to the very great handicap and difficulty which is experienced by Members on account of the sudden withdrawal of numerous amendments on the floor

[K. T. M. Ahmed Ibrahim Sahib]

of the House. There are on the Agenda paper numerous amendments. Suddenly member after member rises and withdraws them. It is obvious, Sir, that the withdrawal by the Members is not due to their individual judgment, but is the result of decisions arrived at outside the House by the Party to which they belong. Therefore I would appeal to the Members of this House and to the President to see that the withdrawal is communicated by the Members beforehand so that the other Members of the House may be saved from the inconvenience caused by the sudden withdrawals. When we come to the House we have to come prepared in respect of all the amendments on the agenda paper and should have formed opinions as to whether to support or oppose them. Suddenly we are faced with these withdrawals and much time and energy is lost by us. It will be better if, as soon as the Party concerned decides upon these amendments, their decisions are communicated to the office so that the office may communicate them to the other Members of the House that such and such amendments have been withdrawn. I hope that the Party concerned will have some regard for the convenience of the Members and communicate its decisions in regard to these amendments to the office in time so that we may be able to know what amendments will be moved and what not. I am quite conscious of the fact that neither the President nor the House nor myself can compel any Member to give notice of his withdrawal earlier. But, when we know that the Party concerned has come to a decision with regard to these amendments much earlier than the date and hour of a meeting of the Assembly, it will be for the convenience of the Members if they tell us earlier that they are not moving such and such amendments. I appeal to you, Sir, to see that this procedure is adopted. Hundreds of amendments are tabled and not even a few of them are being moved. Why all this inconvenience and why all this waste of energy? Sir, I appeal to you and to the Party concerned to have some regard for the convenience of the other Members.

Mr. President: I think it is the right of every Member of the House to give notice of any amendment he likes, and if any Member does not take advantage of that right which he possesses and does not give notice of amendments in his own name and depends upon somebody else, he can have no grievance if that other Member on whom he was relying does not move his amendment. It is not a question of convenience or inconvenience when Members are given time to send up their amendments which they later find it not necessary to move. No doubt with such withdrawals some inconvenience is caused. But no Member can have a grievance on the ground that any one Member has not moved his amendment. If the Honourable Member thinks that any particular matter is of such importance that an amendment should be moved, he must himself have given notice of an amendment in time. I cannot ask any Member not to withdraw an amendment if he wishes to, but I am quite sure Members will take into consideration the convenience of other Members and accommodate them wherever they can.

Mr. Gopalaswami Ayyangar may now reply to the debate.

Mr. N. Gopalaswami Ayyangar: Sir, so far as I have followed this debate, there are only two amendments before us for taking a decision on in respect of this item. The first is the one moved by Mr. Santhanam. Sir, I accept his amendment with only one verbal change which does not affect the substance of it. As amended by him the first portion of Item 5 will read:

"The raising, training, maintenance and control of Naval Military and Air Forces and the employment thereof".

The rest of the words in that sentence will be omitted. I think it will be better to say 'and their employment' and drop the word 'thereof'. That is the only thing.

Shri K. Santhanam: I have no objection.

Mr. N. Gopalaswami Ayyangar: As for the point raised by Mr. Aney, it is no doubt desirable to indicate some of the purposes for which these Forces might be employed. But he also seemed to concede the position that such mention might limit the range of the purposes for which those Forces might be used.

On the whole I think it will be conceded that the purposes mentioned in the original draft are only the obvious ones and even if we omit them the words 'their employment' will cover those purposes as well as many other purposes for which the armed forces could be employed. I think, Sir, it is best to drop those words at the end of the first part of this item and leave it at the place where Mr. Santhanam has proposed that that sentence should be left. Then, Sir, the other important amendment that was proposed was the one which was moved by Sir V. T. Krishnamachari. There is no difference of view between what those who support this amendment have at the back of their minds and what the Committee itself had at the back of its mind when it worded this particular item, the latter part of it, in the way that it has done. The intention of the Committee is stated in paragraph 5 of the Report. This says:

"We have included in the federal list the item 'the strength, organisation and control of the armed forces raised and employed in Indian States'. Our intention in doing so is to maintain all the existing powers of coordination and control exercised over such forces."

The purpose of the amendment is to draw attention to the degree of connection between the Centre and armed forces in the Indian States. The categories in which those forces are placed were mentioned by my Honourable friend Mr. Pattani and the Committee's understanding of the present state of things was the one which has been embodied in the wording of this particular item. I understand that while the mover of this amendment thinks that the wording that has been suggested in the amendment is more in accord with the intention of the Committee than the wording in the item as drafted, he is not in a position to say that that is absolutely accurate; and he himself suggested that I should investigate this matter, and see that the intention of the Committee is implemented in the sense that it was intended to do. I therefore wish to give the Honourable the Mover of this amendment the assurance that I shall do so and we shall, if necessary, in the text of the constitution that will come up before the House later on re-word it in a manner which would be in accord with the intention as stated in paragraph 5 of the Report. I hope, Sir,

[Mr. N. Gopalaswami Ayyangar]

that, in view of that assurance, the Mover will not press his amendment.

Sir V. T. Krishnamachari: I do not press that amendment.

Mr. President: We have Mr. Santhanam's amendment which has been accepted by the Mover. It only involves a slight verbal change.

Mr. Santhanam's amendment was adopted.

Mr. President: Then there is only a verbal amendment moved by Sir V. T. Krishnamachari that in item 5, after the words "Air Forces", the words "borne on the Federal establishments" be inserted.

Sir V. T. Krishnamachari: I withdraw that in view of this amendment.

Mr. President: That is withdrawn and the second amendment is not also pressed. We have got the original item as amended by Mr. Santhanam and that is now put to the vote.

Item 5, as amended by Mr. Santhanam's amendment, was adopted.

Item 6

Mr. President: Then we go to item No. 6.

Sir V. T. Krishnamachari: I do not press this amendment, Sir, in view of Mr. Alladi Krishnaswami Ayyar's. I propose to support Mr. Alladi Krishnaswami Ayyar's amendment. Therefore, I do not propose to move this amendment.

Mr. President: Mr. Alladi Krishnaswami Ayyar, you have to move the amendment to item No. 6.

Mr. Alladi Krishnaswami Ayyar (Madras: General): The amendment of which I gave notice runs in these terms:

> "That for item 6 the following be substituted:
> 'Industries necessary for the purpose of Defence or for the prosecution of war and declared as such by Federal Law'."

I might mention it has been suggested in some quarters that the first part of the amendment might make it a subject of litigation inviting a judicial decision as to whether industries are necessary for the purposes of defence and therefore the suggestion has been thrown out, that there may be a slight verbal amendment to my Motion, namely, industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war. If the House has no objection to that verbal amendment, with that verbal amendment I shall move my clause, i.e., "industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war."

In moving the amendment, I should just like to make a few observations. In the first place there is no intention behind this item to interfere with the normal function vested in a Provincial Government, namely, that industries must in the normal course be the sole concern of the Provincial Government. This is intended to be an exception to that rule and that is why the word "defence industry" was put in. But the word "defence industry", it was rightly pointed out, is open to the legitimate comment that under modern conditions of

warfare any industry may be treated to be a defence industry and if so under the guise of this item the Union Legislature might interfere with Provincial Autonomy and the normal course of Provincial Administration.

Therefore, a certain qualification is necessary for the words "Defence Industries" and that qualification is brought out by the amendment. No doubt, it gives power to the Federal Legislature to declare certain industries as defence Industries by Federal law. How does that make any difference, it might be legitimately commented upon. The answer is, the attention of the Federal legislature is particularly drawn to this point when the Federal Legislature is called upon to declare whether it is necessary for the purpose of defence or not. If, for example, it is likely to be wrongly used, the representatives of the people in the legislature will take exception to the enactment and urge that it does not carry out the object of the measure, namely Federal defence, that it is merely an object which is mentioned in the preamble, but the actual sections do not carry out the object. Therefore, it would be open to the members of the legislature to take exception to this fact, namely, that it is not intended to subserve the purpose of defence. I trust that this amendment will, while serving the purpose of defence, also remove the apprehension on the part of the provinces that under the guise of this item, there is any intention on the part of the Central Legislature to encroach upon the legitimate and proper sphere of the provinces, namely, the promotion and encouragement of provincial industries.

Mr. Himmat Singh K. Maheshwari: Mr. President, Sir, the amendment which stands in my name runs as follows:

"That in item 6, for the words 'Defence industries', the words 'Industries for the manufacture of fire-arms, atom-bombs and ammunition' be substituted."

The fact, Sir, that this item is vague has been realised and admitted. Prima facie, it is not clear which industries will fall under this category. Textiles or Sugar Mills, Vegetable Oil Mills or Cement, Iron and Steel factories, Cultivation of Food crops, all these are necessary for the purpose of defence. If the intention were to include them or some of them in item 6, I fear a great deal of confusion is bound to result. A comparison of the present list with the Government of India Act, 1935, also shows that the framers of that Act did not consider this item to be necessary for inclusion in the legislative list then. Even now, nobody seems to be clear in his mind as to what industries are really intended to be brought in. Mr. Alladi Krishnaswami Ayyar's amendment just moved does not seem to me to carry us far. Even now, the wording of the amendment moved by him is almost equally vague. I should like therefore, Sir, some explanation, some clarification to be given to the House as to what exactly the intention is in including this item. When such clarification is afforded, it will be time for me to consider whether I shall withdraw my amendment or press it.

Mr. President: Mr. Madhava Rao. I passed over an amendment which you have given notice of.

Mr. N. Madhava Rao (Eastern States): Sir, in view of the amendment moved by Mr. Alladi Krishnaswami Ayyar, I do not propose to move my amendment.

Mr. President: These are all the amendments which I have got notice of. The amendments and the item are now under discussion.

Mr. Naziruddin Ahmad: Mr. President, Sir, I support the amendment moved by Mr. Alladi Krishnaswami Ayyar and oppose the amendment by Mr. Himmat Singh Maheshwari.

I think the need for this item has been already made clear by Mr. Gopalaswami Ayyangar. I should have thought that item 1 'Defence' was comprehensive enough. But as he pointed out, this may lead to litigation and trouble and in order to avoid all misunderstanding different sub-items have been introduced. But then, there are ambiguities in the item even in its present form as to what 'defence industries' might mean. So, the amendment by Mr. Alladi Krishnaswami Ayyar has attempted to make the position clear. It is left to a Federal law to define the purpose. There is no doubt that when the Federal law attempts to define it, a very careful examination will be made of the industries which might reasonably come within the purview of the objective. But it is impossible now to further clarify it, because, if we attempt to do so, we will unduly restrict the scope of this item. As the assurance given by the mover of the first amendment would not be binding on the honourable the mover of the Report on behalf of the Leader of the House, I therefore think that the mover of the Report himself should give the assurance that in making legislation, the purpose of defence should be strictly adhered to. If this is done, I think there will be no trouble.

With regard to the last amendment, my fear is that it unduly restricts the scope of the item. Defence is so great and important a subject that everything, even personal or even national convenience must yield to the exigencies of defence and in these circumstances, we should give full power to the Federal Legislature to deal with it. There is no doubt that the convenience of the public would be taken into account so far as can be consistent with the safety of India. With these few words, as I have already said, I support the first amendment and oppose the second.

Mahboob Ali Baig Sahib Bahadur: Mr. President, Sir, I consider that the amendment moved by Mr. Alladi Krishnaswami Ayyar is unnecessary. The motion for inclusion of defence industries is correct. It is enough. If Mr. Alladi Krishnaswami Ayyar's amendment is accepted, a difficulty is created. If we remember that these items mentioned in the list are the items with regard to which the legislature can legislate, it is not necessary for you to include in this very item that they should be declared by federal law as industries for defence purposes.

It is unnecessary for you to include under this particular item that they should be declared by federal law as industries for defence purposes. Was it meant by the inclusion of certain items in this list to

say that these are items with regard to which the Federal Legislature has the right to legislate? In these circumstances where is the necessity in this particular item to mention that certain items should be declared by federal law as defence industries? If we accept this amendment several difficulties will arise with regard to other items by contrast or by difference in the wording of this item and the other items.

This clause "declared as such by federal law" is unnecessary. The item may be left as it is. If you mean to specify in this particular item certain industries, I should very much prefer the amendment of Shri Himmat Singh K. Maheshwari which mentions the specific instances upon which the legislature can legislate, although I do not agree that the items mentioned might not be extended. My preference is for the original item as it is. As I submitted the amendment of Mr. Alladi Krishnaswami Ayyar is not only unnecessary and superfluous but it might lead to unnecessary difficulties with regard to other items. If this House wants to specify certain items on which the legislature can legislate, it is better to enumerate all the items. Therefore I oppose both the amendments and support the item as it is in the original motion.

Mr. Alladi Krishnaswami Ayyar: Both in the Government of India Act and in the present report you will find the words "declared by federal law" in several items by which such declaration is made a condition of the item being brought into the list. That is the object of the clause "declared by federal law to be necessary for the purpose of defence or for the prosecution of war."

Mahboob Ali Baig Sahib Bahadur: That does not justify the inclusion there.

Mr. N. Gopalaswami Ayyangar: Sir, in the ordinary course of things I should have been grateful to Mr. Mahboob Ali Baig for the support he gave to the item as it stands in the list but I am afraid I have been persuaded to the view that Mr. Alladi Krishnaswami Ayyar's amendment is a better description of the power that should be vested in the Federal Legislature than the original item. The reason for that has been indicated by Mr. Alladi Krishnaswami Ayyar himself. But what I would draw the attention of the House to is the new description that is proposed in the amendment of Mr. Alladi Krishnaswami Ayyar. Industries are a subject primarily assigned to the province. If we are going to cut out of that subject a slice in respect of which the Federal Legislature should have power to make laws, it is desirable that that slice should be fairly well defined and that that power should be taken only in respect of those industries which have to be taken out of the jurisdiction of the provinces and placed within the jurisdiction of the Centre. If we left the item to stand as it is in the original draft, the courts would have the jurisdiction to say whether a particular industry is or is not a defence industry: whereas if we adopted the language of Mr. Alladi Krishnaswami Ayyar's amendment as verbally modified by him, it would be for the federal legislature first to take a decision as to whether it is necessary for purposes of defence that a particular industry should be

[Mr. N. Gopalaswami Ayyangar]

taken over under the control of the Federation; and, when the legislature has taken that decision, the courts cannot intervene to say that it is not an industry necessary for purposes of defence. That is why it has been decided to accept this amendment.

So far as the amendment moved by my Honourable friend Mr. Himmat Singh K. Maheshwari is concerned, the matter has been referred to already by Mr. Nasiruddin Ahmad. We cannot confine defence industries to the manufacture only of fire arms, atom bombs and ammunition. Even in times of peace the Federation may have to exercise jurisdiction over a number of industries which do not relate to those items. If it is necessary for purposes of feeding, clothing or otherwise equipping our armed forces that certain industries should be taken over under the control of the Federation—whether those industries should be owned by the Federation or controlled by it—there should be no impediment in the way of the Federal Legislature acting in the manner in which it is suggested that it should act. Therefore I would oppose Mr. Himmat Singh Maheshwari's amendment and accept the amendment of Mr. Alladi Krishnaswami Ayyar.

Mr. President: I will put first the amendment of Mr. Alladi Krishnaswami Ayyar to vote.

The question is:

'That for item 6 the following be substituted:

"Industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war'."

The motion was adopted.

Shri Himmat Singh K. Maheshwari: I take it, Sir, that Mr. Alladi Krishnaswami Ayyar's amendment is only intended to put off decision and I have therefore no objection to withdrawing my amendment.

Mr. President: The amendment of Mr. Alladi Krishnaswami Ayyar takes the place of the original item and I will therefore put it to the House.

The question is:

"That the original item as amended by Mr. Alladi Krishnaswami Ayyar's amendment be accepted."

Item 6, as amended, was adopted.

Item 7

Mr. President: There is only one amendment to item 7. That is by Shri Himmat Singh Maheshwari—No. 4 in List VI.

Shri Himmat Singh K. Maheshwari: Mr. President, Sir, the amendment which I beg leave to move is:

"That in item 7 the following be inserted at the end:
'other than works belonging to a Federated State'."

The item as it stands at present is "Naval, Military and Air Force works". As I understand it, Sir, some Federated States have got Military and Air Force works built by them at their own expense. I take it that the Federation has no intention of taking these over. Sub-

ject, therefore, to any assurance that may be forthcoming on this point I should like to say as little as possible and to await further remarks from the framers of the Report.

Mr. N. Gopalaswami Ayyangar: Sir, with regard to the last observation made by my honourable friend Mr. Himmat Singh let me say that the inclusion of this item as it stands in the list does not necessarily import any idea of the Federation expropriating any State of any of its rights of property in works built by it. But I must warn him at the same time that if, in the interests of the general defence of the country, the Federation should decide that it should take over and either own such works in Indian States or should control them, then it should be free to do that sort of thing. I do not think even Mr. Himmat Singh will question the right of the Federation in the interests of the general defence of the country to determine for itself what Military, Naval and Air Force works should be owned or controlled by the Federation and what might be left to the Indian States themselves. That will be a matter of detail in any legislation that may be undertaken. But the power will certainly be there in the Federation.

Shri Himmat Singh K. Maheshwari: In view of the explanation given I withdraw the amendment.

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

Mr. President: The question is:

"That item 7 be adopted."

The motion was adopted.

Item 8

Mr. R. K. Sidhwa (C. P. & Berar: General): Sir, item 8 in List I of the Appendix reads: "Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas." If you refer to the Government of India Act, 1935 (p. 299 item 2) the words are almost identical to what I have read before the House just now. It reads thus: "Local self-government in cantonment areas—not being cantonment areas of Indian States—the regulation of house accommodation in such areas.....etc." So the wording in this list coincides almost identically with what the Government of India Act says: My amendment reads thus:

"That in item 6, for the words 'Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities' the following be substitued:

'Control of the area occupied only by military force, arsenals, factories for manufacturing areas, ammunition, etc.',"

From the amendment that I have moved it will be seen that I am making a differentiation between the local self-government area and the cantonment area. This subject has for the last two decades been a most contentious subject and has been receiving the attention of the various authorities of India—I mean particularly the local authorities and the cantonment authorities—on the one side the Provincial Government and on the other the Central Government. Just before the

[Mr. R. K. Sidhwa]

war the Government of India had to intervene and find out a way for this contentious subject that has been pending since over two decades. Then the war came in and the subject-matter is at a standstill. Those who have visited the cantonments and studied the subject, I am sure, will be able to grasp this contentious subject very easily. Notwithstanding that, I would suggest to the honourable House to bear with me for a few minutes to understand the intricate question that this item relates to.

There are in India several cantonments where troops are located. Within that cantonment area and within those areas where the troops are located there is a civil population. This civil population is also governed by the Cantonment Act. As far as the troops area is concerned that is kept by the Cantonment authority in as sanitary a state of affairs as possible and all amenities are given to the troops. But just about a mile and a half away from this troops area, where the civil population resides, these amenities are not given. There is scarcity of drinking water, the drainage system is very defective, hospitals and wells are lacking. In some places the area covered is from one mile to about eight or nine miles, and the limitations are so framed that at certain stations the area comes within the jurisdiction of the local authority—I mean the provincial government—and just across the road, only 25 yards away it is the cantonment area.

All sorts of complications have arisen so many times between the local authorities, the Central authorities and the Provincial authorities because the rights and privileges which the civil population enjoys outside the cantonment are denied to them inside the cantonment. This is because the cantonments are, as I said, governed by the Cantonments Act. Under this Act a limited number of persons are nominated from the Military authorities and a few from the rest of the population to look after the affairs of the cantonment. A few landlords and people like them may be there. All the other seats are filled by the military officers. Therefore the rights and privileges of the civil population inside the cantonment are denied to them whereas the population just across the boundary—just 25 yards off—are enjoying these rights, in their local bodies and municipalities.

Mr. M. S. Aney: How much more time will the Hon'ble Member take?

Mr. R. K. Sidhwa: I will take a long time, Sir. This is a matter on which I am not expressing merely my own views, but it is a matter on which the All-India Local Bodies Association from year to year and from month to month.....

Mr. President: In that case, we shall continue the discussion tomorrow. You can continue your speech tomorrow if you like (*Some Honourable Members*: Not tomorrow, but Monday.) Yes, on Monday. **The House stands adjourned till 10 o'clock on Monday.**

The House then adjourned till ten of the clock on Monday, the 25th August 1947.

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Volume V
No. 6

Monday
25th August
1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Monday the 25th August 1947.

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

SIGNING OF THE REGISTER

The following member signed his name in the Register :—

Mr. Syed Abdul Rouf.

TAKING OF THE PLEDGE

The following members took the pledge :—

The Honourable Sri Kala Venkata Rao.
Mr. Syed Abdul Rouf.
The Honourable Mr. Brijlal Nandlal Biyani.

ANNOUNCEMENTS BY THE PRESIDENT

Mr. President: I have received a letter from the President of the Constituent Assembly of Burma in reply to the message we had sent to him. The letter reads as follows :—

"On behalf of the Constituent Assembly of Burma I personally thank you for your message of condolence for the loss Burma has sustained by the assassination of General Aung San and his colleagues. The Burmese nation will surely enjoy peacefully the fruits of independence which the fallen heroes have just won for Burma. Kindly convey to all Members of the Constituent Assembly our appreciation of this message of sympathy. I will convey the message of condolence to the bereaved families."

Before we go to the next item, namely, the consideration of the remaining items in the list, I would like to make certain announcements with regard to the programme of this session. As I said the other day, we should try to complete the consideration of the Report of the Union Powers Committee as soon as possible. The progress we have so far made has been very slow. I propose to set apart today and tomorrow for the consideration of the Union Powers Committee Report, and from Wednesday we shall take up the Report of the Advisory Committee relating to Minorities and Fundamental Rights and I think this will take Wednesday and Thursday. Friday will be reserved for the consideration of the Report of the Committee which we appointed the other day to suggest to us what steps should be taken with regard to the Constituent Assembly and the Legislative Assembly functions of this Assembly. I hope thus that we shall be able to end the work of this session by the 31st at the latest. If necessary, I propose that we sit in the afternoon and also on Saturday and Sunday next and if necessary, have night session. We have got so many other things to do that it is not possible to prolong this session beyond the end of this month and therefore I am anxious to complete this work as far as possible. Now, I am proposing to interrupt the consideration of this list by interposing the Reports of the Advisory Committee for this reason. So far as the drafting is concerned, it will depend very much upon the consideration which this Assembly gives

[Mr. President]

with regard to those subjects covered by the Reports of the Advisory Committee on Fundamental Rights.

But so far as the list itself is concerned, much drafting is not required and whether the Assembly accepts a few subjects or turns them down it would be easier to incorporate that in the draft when the report is drafted. Therefore I am anxious that the part of the work of this Assembly should be finished which is essential for drafting purposes as I wish to have the draft prepared as soon as possible and for that purpose a Drafting Committee will have to be appointed which we shall do on the last day of the Session.

There is one other thing which may take a little time. The late Sir Prabha Shankar Pattani has bequeathed to the Nation a portrait of Mahatma Gandhi done by a distinguished artist of England Mr. Oswald Birley and that has been presented to us by his son who is a member of this House and members will surely appreciate the gift and would like to have the portrait put up in a suitable place in this Assembly. For that purpose we may require a little time on one of these days which I shall fix for that function. I shall announce the day. May be on Friday next in the afternoon but I shall finally fix it up later.

Mr. Tajamul Husain (Bihar: Muslim): Sir, you have told us that this Session would perhaps end by the end of this month but you have not told us when the next session will begin.

INCIDENTS IN WEST PUNJAB

Shri Algurai Shastri (United Provinces: General): *[Mr. President, I want to say a few words before the commencement of today's proceedings. I wish to draw your attention to the fact that in view of the unfortunate incidents in West Punjab, and the manner in which people are being massacred and the killings are taking place, today's proceedings should be postponed in order to express our sympathy with the unfortunate people there. It is inappropriate for us not to pay attention to these unfortunate happenings and to proceed with our work of constitution-making. I have been realising this for sometime; and for the last several days, I was on the look out for an opportunity to raise this point but hesitated to do so, in consideration of the fact that when this Assembly meets as a Dominion Parliament, that will be the right occasion for its consideration. But when on that day, some of our colleagues drew your attention on the flag question, you permitted the Leader of the House to make a statement here. I am of opinion that problems can arise, in view of which it will not be improper for us to postpone our proceedings for a short while. The Constituent Assembly is a democratic and independent body and over the whole field of its work it is fully sovereign. There have been incidents in a portion of this country where innocent children and women have been massacred and where trains have been stopped and passengers murdered. These incidents invite our attention. During these last few days such shocking and heart-rending incidents have taken place that it will be difficult to find their parallel (even) in the barbaric epoch of India's history. At a time when foundations of

*English translation of Hindustani speech.

democratic government are being laid, occurrence of incidents of this kind is painful. If we are concerned only with making our constitution and pay no attention to these incidents, then the coming generations will say that, just as Nero was playing on his flute while Rome was burning, similarly we were absorbed in constitution making while Lahore and other places were burning and people were being killed. We must not give an opportunity (to anyone) to put such blame on us. Our sense of humanity will diminish if we do not express our heart-felt sympathy for those helpless people whose wealth worth crores of rupees has been looted and who are very anxious for the protection of their wealth and property which is (still) in the Punjab. Fleeing people are being butchered. How disgraceful it is that people's heads are being chopped off in the same way as a lawn-mower cuts off the grass! Since the 15th, we are the Dominion Parliament as well. How much our hearts are full of anger, anxiety and shame at our being unable to protect those helpless old men, women and children! This is such a helpless state and such a deplorable state, that it puts us to shame and grief. It would have been very different if either the Honourable the Home Member or the Leader of the House or the Defence Member were to make a statement in this connection. Therefore I propose that in order to express sympathy for the dead or for their survivors, the proceedings (of this House) should be postponed. I am aware that objection may be raised to this proposal but we have seen that on the arrest of our leaders, the proceedings of Corporations and Municipal Boards etc. used to be postponed. When on previous occasions we could postpone proceedings we should not have any difficulty in doing so today, even though Maulana Hasrat Mohani has suggested that the report of Union Powers Committee should not be considered at all. We should have a full constitutional right to postpone the proceedings for a short while and I hope that the House will postpone its proceedings at least for fifteen minutes.]*

Mr. President: *[There is no doubt that there would hardly be any Indian whose heart would not be pained and full of sorrow and grief at whatever is happening as a result of which so many murders are taking place and there is such a lot of loot, arson and destruction. Now the question is as to what we here in this Assembly can do and what we cannot do. You may rest assured that your government is doing and will make every effort to do what ever is possible in this connection. Your Prime-Minister is himself touring those places and it is for this reason that he is not present here today. There is no doubt that we have full sympathy with those numerous persons who are undergoing terrible suffering. We will help them to the extent possible and will not shirk our responsibilities. At this time, if it is the desire of all members of the House, surely we should stand up and express our sorrow and sympathy for all those who are involved in this calamity and who are suffering all these hardships. If all agree, then I hope that it would be enough if we all stand up and express

]* English translation of Hindustani speech.

[Mr. President]

our sympathy for those who are undergoing all this suffering and pay our homage to those who, as a result of these calamities, have departed from this world.]*

The Members stood up and observed silence for a minute.

Mr. President: A suggestion has been made that the House should express its sympathy, by adjourning itself for about quarter of an hour, with those who have suffered in the riots which are going on in the country. I have suggested that instead of adjourning the work of this Assembly, we should all rise in our places and express our deep sympathy with those sufferers; and there can be no difference of opinion that the riots which are taking place are the most disgraceful from the point of view of the nation and are such as would make the heart of any patriot sick with the happenings and I therefore requested the members to stand in their places and express their sympathy with the sufferers and I have also pointed out that so far as the Government is concerned, the Prime Minister has flown to that place and is not here today because he is there and is doing all that can be done to help the sufferers and bring about the cessation of the events that are taking place there.

We shall now proceed with the discussion.

REPORT OF THE UNION POWERS COMMITTEE—*contd.*

Dr. P. S. Deshmukh: (C. P. & Berar: General): Sir, I want to make a suggestion for your consideration if we can modify the programme you have announced. It is quite evident that we do not propose to complete the consideration of the Union Powers Committee's Report. In view of the fact that we can only advance a few items more, it would be better I think for us if you allot tomorrow also for the consideration of the Minority Committee's Report and thus have a day more for the consideration of the Report of the Committee that you appointed the other day. My point is that we should not adjourn the present Session without doing two things.

Firstly, we should complete the consideration of the report of the committee on Minority Rights and secondly we, as the Dominion Legislature, should not disperse without having an opportunity to discuss the West Punjab situation. These are the two things which I would like you to consider. If you accept my suggestion we may be better able to complete the consideration of the Minority Committee's Report and then meet for a couple of days as Legislature to discuss the most harrowing spectacle of the West Punjab, and also the East Punjab. Sir, we are quite sure that our Government is doing its very best and we have no doubt that everything possible is being done. Nonetheless, since we have transformed ourselves into a Legislature, every one of us is responsible to the millions of people whom we represent. As such we ought to know, and the world ought to know and India ought to know what exactly is happening there and to what extent we have discharged our duty. From that point of view, I think you should, Sir, accept my suggestion by which we will have one more day for discussing the Committee's Report, and then if possible meet as a Dominion Legislature may be even for a few hours during the present session itself.

Mr. President: Let us not spend any more time discussing the pro-

]* English translation of Hindustani speech.

gramme of sittings. I have fixed day after tomorrow to enable members to have as much time as they want for the consideration of the Report on Minority and Fundamental Rights. I have fixed day after tomorrow to enable members to have time to send up amendments before it actually comes up for discussion.

The question of having a meeting of the Assembly as Legislative Assembly can be decided only after the report of the Sub-Committee has been received. We shall await its report.

The Assembly will now resume consideration of the Report of the Union Powers Committee. Mr. Sidhwa will now speak on his amendment to Item 8.

Mr. R. K. Sidhwa: (C. P. & Berar: General): Last Friday, while moving my amendment to Item 8 in relation to the powers of the cantonment authorities, I stated that there are cantonments in various stations in India, small and big, and that these are within a radius of one to eight miles. As far as the troops are concerned, they are located in barracks and governed by the Cantonment Code or Cantonment Act. These troops are given all facilities and comforts and conveniences. I have no objection to that. The troops certainly ought to get all conveniences such as good water-supply, proper drainage, hospital facilities, etc. There are theatres and cinemas also for their amusement. Apart from that they have got their own messes and canteens and shops from which they could provide themselves with their other requirements. We do not want to make any change in these arrangements hereafter as far as the conveniences of the troops are concerned. We do desire that the troops should be well looked after and kept content in the area in which they reside. What we seek is this: Within a distance of two miles of these areas where the troops are located there is civilian population also in these cantonments areas. If the House will bear with me for a while I would like to mention that this civil population is deprived of all the rights and privileges which the population elsewhere enjoy. We do not want that this civil population should have the same facilities and conveniences as the troops enjoy. But I contend that some at least of the creature comforts should be provided for this civil population. I have in mind provision of drinking-water supply, drainage facilities, hospital arrangements and electric lights.

Another thing is that these areas in the earlier days had been selected in a haphazard manner, without any serious consideration being paid to the selection. They have been so arranged that on one side of the road there is the civil Government functioning, and on the other, the military. This fact has caused discontent and grievances and these have been ventilated in the press and in conferences and in correspondence between the Provincial Governments and the Centre. Nothing has been done so far to remove the cause of discontent. The military authorities are lukewarm in this matter of provision of facilities to the civil population.

When these questions are raised now, it may be argued that we are running our own Government and that we must have a different outlook in all these matters. We are also told that we are labouring under an inferiority complex even now. I submit that one can reply

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to such arguments that the government being popular, the old Government of India Act can continue and not bother about making a new Constitution. It must be remembered that there is a principle involved in this question, *viz.*, that we should see to it that the civil population in the cantonment areas get the same rights as the civil population elsewhere. They should not hereafter be denied the vote and the opportunity to get redressal of their grievances.

In the Cantonment Board there are only a few nominated members and fewer members to represent the civil population. Sir, it is very improper that the civil population should enjoy certain rights and privileges even in notified areas and the civil population in the cantonment areas should be denied the same. This is a matter of right and therefore my amendment seeks that where there are troops they should be governed by the cantonment board, but where there is civilian population it should be governed by the Municipal Act so that the civil population may have the rights and privilege which the civil population elsewhere is enjoying. Let me tell you that at times when the people in these areas suffer from diseases they do not get the medical help which the people living in municipal areas get; because under the present Act any person who is residing out of municipal limits is not entitled to the beneficial measures in force in municipal areas.

Another important factor is that a large portion of this area and the land has been given away to a certain class of people almost free of charge. I would say if this land is sold it will realize crores of rupees. These lands ranging from two to five thousand square yards are given to a class of people at a nominal price of Rs. 500 or Rs. 1,000. On these lands properties have been built and occupied by some people and then sold and resold and that class of people have made tons of money. It is State land. The Provincial Government is deprived of this land. The Central Government also has been deprived of this valuable land and the whole benefit is enjoyed by a section of people. I might here inform you, Sir, that in one station alone 80 per cent. of the property is owned by one man.

Mr. President: I do not want to interrupt you, but we are not discussing the mismanagement in the Cantonments. We are discussing a particular item in the list and whether the Federal list should contain this item. You need not therefore go into the whole question of mismanagement or maladministration of Cantonments here.

Mr. N. Gopalaswami Ayyangar (Madras: General): If you will kindly permit me to say a few words, I hope Mr. Sidhwa will not pursue the speech. I will say just a few words. Sir, five amendments have been given notice of in connection with this clause. A number of questions have been raised in connection with this particular item and, Sir, it has been considered that it will be desirable to investigate all the aspects of this question in detail before the final form of this item can be settled. If you will permit me, Sir, I would ask that this item may be held over for the present. We will come back to it later on.

Mr. President: The suggestion is that this item may be held over and may put forward in a form which will be acceptable to all and

then all these amendments will become unnecessary. We will pass on to the next item, No. 9 of the list.

ITEM 9

(Messrs. Mohan Lal Saksena and M. Ananthasayanam Ayyangar did not move their amendments.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President Sir, I beg to move that item 9 be deleted. The reason is that there has been in the past considerable amount of dissatisfaction in the country that we had not freedom as to the use of arms or firearms. There has been tremendous and persistent agitation over this and it need not be elaborated. Now my amendment is that this should be removed from the Federal List and be made a Provincial subject, for which purpose an appropriate amendment would be submitted later on. I think that so long as the British were here their objective was to disarm the people and they did so out of suspicion and jealousy of the Indian people and they kept it as a central subject. Now as the British have gone, the reason for making it a Central subject has also, I submit, gone. It would be a very proper gesture now on the part of the Centre to let the Provinces to exercise this power. If there is any difficulty as to giving these privileges to the Provinces it may be carried to List No. III and it would be a concurrent subject. I submit that the retention of this item any more as a Central subject would be wrong. I believe that though the British have gone, their ghosts still haunt our minds and we want to cling to the power.

Mr. President: There is only one amendment. It is that Item 9 should be deleted. Does anyone wish to speak about this?

Mr. N. Gopalaswami Ayyangar: Sir, I gathered from the speech of Mr. Naziruddin Ahmad that he does not propose to remove from the scope of legislation this item of arms, fire arms, ammunition and explosives. His suggestion seems to be that there is no need for Federal legislation on this subject, and that this subject might be transferred to the Provinces. I think, Sir, that, in a matter of that importance, arms, fire arms, ammunition and explosives, particularly in these days, it is very necessary that the control which legislation might impose upon these particular things should emanate from the Centre. There should be uniformity about the manufacture, possession, transport and use of arms, fire arms and ammunition. It would perhaps interest Mr. Naziruddin Ahmad to know that even the States which have acceded to the Dominion already have acceded on this subject, which means that they are prepared to let the Federal Legislature make laws for this subject. I hope, Sir, he will not press this amendment.

Mr. President: I will put Item 9 now to vote. The amendment is that this item should be deleted.

The amendment was negatived.

Mr. President: I put the item to vote, whether it is to be retained.

The motion was adopted.

ITEM 10

Mr. President: We will now proceed to Item No. 10. I do not find that there is any amendment to this, unless Mr. Himmat Singh Maheswari wishes to move any amendment.

Shri Himmat Singh K. Maheshwari (Sikkim and Cooch Behar Group): Mr. President, Sir, the object underlying my amendment* to this item is that the mineral resources required for the production of atomic energy should be paid for wherever it may be necessary to take them over. This does not require any lengthy argument and I hope the framers of the Report will accept it without any hesitation.

Mr. President: Does anyone wish to say anything about this?

Mr. N. Gopalaswami Ayyangar: Sir, this item relates only to the passing of legislation by the Centre in respect of atomic energy and the mineral resources required for that purpose. But the inclusion of an item like that in the Federal list does not mean that the centre is going to expropriate any people who might own mineral resources of their own, whether it is an Indian State or a Province or a private individual. If it is necessary for the interests of the Federation that control should be exercised or even acquisition should be made of those resources; certainly due compensation will be paid. I do not therefore think that it is necessary that this word should be added at the end.

Shri Himmat Singh K. Maheswari: In view of the assurance given, I do not press my amendment.

Mr. President: I take it that the amendment is allowed to be withdrawn. I put the original item 10 to vote.

The motion was adopted.

ITEM 11

Mr. President: We go to the next item. (Item 11.)

So far as I can see, there is no amendment to item No. 11. I put it straightaway to vote.

The motion was adopted.

ITEM 12

Mr. President: We go to item No. 12. There is an amendment by the Prime Ministers of States to this item.

Sir V. T. Krishnamachari (Jaipur State): We do not move the amendment.

Mr. President: There is no other amendment to item No. 12. I put the item to vote.

The motion was adopted.

ITEM 13

Mr. President: We pass on to item 13. There is no amendment to item No. 13. I put it to vote.

The motion was adopted.

ITEM 14

Mr. President: Now, we take up item No. 14. There is an amendment by Sir Ramaswami Mudaliar and other Prime Ministers of States

*That in item 10 the following be inserted at the end:
"subject to payment of compensation to the unit."

Sir V. T. Krishnamachari: Mr. President, Sir, I move:

That in item 14 the following be added at the end :—

"Provided that the Federation shall not by reason only of this entry have power to implement such decisions for a province or a Federated State except with the previous consent of the Province or of the State."

Now, Sir, we participate in all kinds of International Conferences, Associations and other bodies. The power to implement the decisions taken at these Conferences, Associations and other bodies must depend on whether the subject matter of that decision is a provincial or a Federal subject. My proposal is that if these decisions relate to provincial subjects, the consent of the province concerned should be taken before the decisions are implemented. In the absence of such a restriction, the powers of provinces and of States will become almost nugatory. These Conferences relate to matters like agriculture, food, and largely matters which are within the scope of provincial authority. Honourable members will remember that we have section 106 in the Government of India Act which makes provision for this. If the intention is to re-enact section 106, my amendment will not be needed. If, however, that is not the intention, I propose that these words be added at the end of item 14.

Mr. President: Mr. N. Madhava Rau, there is an amendment to item 14 in your name.

Mr. N. Madhava Rau (Eastern States Group II) : I do not propose to move the amendment.

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

That in item 14 the following be added at the end :—

"on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such State."

The point which I wish to make in this amendment is that there may be subjects which are entirely Central or it may come within List No. III in which case the Centre will also have jurisdiction. But the subject may also come within List No. II that is within the provincial jurisdiction. In that case, it would not be proper to give powers to the Centre, to do anything without the consent of the province. In fact, that would be an indirect encroachment over a thing which is reserved entirely and exclusively to the province.

Then, with regard to the States, from the papers which have been circulated amongst us, we find that the States have acceded subject to important reservations. They have acceded with regard to certain subjects which have been clearly defined in the Schedule attached to their Agreement. There may be subjects which are outside the scope of that Schedule. In that case, to ask the Central Government to legislate or to agree to matters coming within the scope of those

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subjects which are outside the scope of the Agreement, that would be allowing that Government to encroach upon spheres which would be prohibited by the Agreement. The Agreement makes it absolutely clear that the States do not accede to anything except those enumerated in the Schedule. In these circumstances, I submit that it would not be proper for the Centre to take powers which may go outside its scope. The principle embodied in my amendment would thus be necessary to prevent confusion and some scrambling for power with regard to certain matters.

Mr. President: There is no other amendment. Now, the amendments and the original item are under discussion. Those who wish to speak may do so.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, I oppose the amendment that has been moved by my honourable friend Sir V. T. Krishnamachari. Honourable members will see that item 16 is "The entering into and implementing of treaties and agreements with foreign countries". They will also find a similar amendment to that item by the same four honourable members. Now, I do not want to anticipate the arguments on that amendment. But item 16, as honourable members will see, relates to the implementing of treaties and agreements with foreign countries. These agreements and treaties are bilateral between this country and another. So far as item 14 is concerned . . .

Sir V. T. Krishnamachari: Are we on item 16?

Mr. K. M. Munshi: No. I am distinguishing between the two, if the honourable member has the patience to listen to me. Item 14 does not refer to bilateral treaties, but refers to international conferences. Now, as the House knows very well, in this age international relations are not necessarily governed by treaties. There are various conferences at which India sends out her representatives and she will be sending them out in much larger measure in the future. At these conferences decisions are taken on the footing that the representatives of India have got the power to implement those decisions; no representative of India will be heard with any weight at all, if he has to keep a reservation that he would come back to this country and ask his 35 unit Governments and if one of them disagrees he would not be able to implement those decisions. In this prsent world it would be impossible for India in such conditions to take part effectively in any conference, except of course as in a debating society without coming to any decision. Therefore it is highly essential that the central legislature as well as the Central Government should have ample power not only to participate in these conferences but to implement the decisions arrived at there.

Take for instance this simple example that I can give you at the moment. Suppose there are trade relations with a country, and as a result of an impending war or of her conduct which is against international policy those trade relations are to be terminated, suppose, all the members of that international association in a body said that they should denounce such trade relations or follow a particular kind of policy as regards them and, that would be a decision, not a treaty. Even if that decision were adopted practically by the whole world, the Indian representative would have to say that he must go back to India and see that every Unit of India—even a State with a population of 20 or 25 thousand—has to say about it, and that until such consent is forthcoming he could not implement it. That will reduce the whole Central Government to a farce before the international world. As the House is aware, we are moving towards a position when most of the decisions regarding all larger policies are taken by international conferences, not in the shape of actual treaties but conventions. Decisions with regard to education, hours of labour and various other matters are taken in this way. Surely if this clause is deleted, it will again come to this that a small section of India can hold up the implementation of the decision approved by the rest. Assuming this power is taken away, India's representatives can go to any of these gatherings and be a party to all their decisions, but when they come here one-sixtieth of India can put a veto upon the implementation of those decisions. That will be the effect of accepting this amendment. If therefore India is to be an international personality and equal to other sovereign bodies of the world it must have the power not only to take part in these decisions but also to implement them.

The safeguard is this. This item here means that the central legislature will have the power to make laws for the purpose of implementing these decisions. Before a decision is implemented it will come before the central legislature; that legislature will fully debate upon it; and it will then decide whether it will implement that decision or not. It is not going to be taken behind the back of the representatives of any member of the Union; it means not only the lower House but the upper House as well,—the House of States. Therefore the representatives of the whole of India—the people as well as the States—will have the right to vote upon it and bring to bear upon it the influence of an all-India opinion. That is the effect of the clause as it stands. Therefore it is not as if something will be done behind the back of any State or province. India as a whole assembled in these two legislatures will consider the point of view of each unit as put forward before it and then come to a conclusion in the interest of the whole of India. If both Houses of the legislature by a majority come to the conclusion that the decision is to be implemented, is it suggested that one State or one small province can say that whatever the legislature may have done it should have liberty not to implement that decision? That destroys the very basis of the sovereignty of this country. Therefore I submit that though it looks a very harmless amendment, the

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results which will flow from it will cripple the power of India as a sovereign member of international society, and I submit that this amendment should be rejected by the House.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, I feel that the amendment placed before the House by Sir V. T. Krishnamachari which is practically a repetition of the provision which existed in section 106 of the Government of India Act of 1935 is a very unfortunate one. He cannot be unaware of the criticism to which that provision has been subjected during the last ten years, particularly in connection with questions relating to labour. Although questions relating to labour could under the Act be dealt with both by the Central and the provincial Governments it was clear that in all essential respects the labour question is an all-India affair; it cannot be dealt with piecemeal by provinces. If it is to be dealt with successfully, in other words in such a way as to create contentment throughout the country and to be in accordance with international views and standards, it is absolutely clear that it should be within the power of the Central Government to give effect in the last resort to agreements entered into at the international labour conferences. Yet it did not possess this power under the Act of 1935. No question relating to the matters which require the consent of the Governments of the units for their implementation has given rise to such dissatisfaction and criticism as that relating to labour. I think even if there were no other instance to be taken into account we should be perfectly justified in throwing out Sir V. T. Krishnamachari's amendment.

But there are other questions which in these days require to be dealt with by the country as a whole. Sir V. T. Krishnamachari was afraid that the power which item 14 would confer on the Central Government would be too vast, and as an illustration of the subjects that it might extend to, he mentioned food and agriculture. I was rather surprised when my honourable friend mentioned these two subjects. If there is anything today that requires to be dealt with by the National Government, it is questions relating to food and agriculture. We know the dangerous position to which we were reduced in 1943 and 1944 because the Government of India either did not possess or was unwilling for some time to exercise the powers required to control the Provincial Governments and bring them to accept a uniform policy. I may go further and say that experience has shown that the matter is of such vital importance that although a state of war does not exist, the Central Government must continue to exercise the power of co-ordinating provincial policies in regard to food and agriculture for at least some time more. Again, Sir, these questions are so important as to require the almost continuous attention of international bodies. There is the Food and Agricultural Organization which has been set up in order that these questions might be dealt with in a co-ordinated way in all the important agricultural countries. It would be most unfortunate, it would be retrograde, if we accepted Sir V. T. Krishnamachari's amendment, with our eyes open and with a full

knowledge of the dangers that we would be exposed to. If we had to obtain the consent of every unit in order to adopt a uniform policy, we would drift again into the position that existed in 1943.

Apart from this, Sir, I should like to say one word with regard to the fears that the representatives of the States or any other units might entertain with regard to the power that the Central Government would enjoy in case item 14 was accepted by this House. The National Government, before accepting any responsibility, will naturally consider whether the responsibility will be one which can be discharged by the units with their own unaided resources, or only with the aid of the National Government. It will not be in a hurry to enter into agreements which will involve large expenditure, because it will in that case be morally bound to help the Provinces to fulfil the obligations accepted by it. Honourable Members may be afraid that the acceptance of international conventions might involve the units in expenditure which they would be unable to bear. I do not think that there need be any fear of it because it is well known that the units, whatever financial powers may reasonably be conceded to them at the present time, will not be in a position either to make education free or compulsory, or to adopt the measures recommended by Sir Joseph Bhore's Committee in regard to public health, or make satisfactory progress in regard to other matters which would lie within the provincial sphere unless they receive generous help from the Centre. It is inconceivable to me in these circumstances that the Central Government should, without adequate thought and previous consultation with the units, commit them to policies which it would be beyond their resources to implement. Again, Sir, the representatives of India at the international Conferences which will be concerned with subjects which the Provinces will be called upon to deal with, will not belong exclusively to the Central Secretariat or the Central Legislature. They will be taken from the Provinces also, and from other units too. Why need we therefore entertain any apprehension about the effect of any international agreement entered into by the Government of India on the finances of the Units? Sir, taking past experience into account, and considering the unenviable position that we have occupied during the last 25 years and more at the International Labour Conferences on account of the unfortunate limitation placed on the power of the Central Government by the Government of India Act, 1935, it is right, and necessary in my opinion, that the power of the Central Government to give effect to international agreements should be wider than it is at present. I should like to add, before I close, that if the number of units were limited and they were of a size which would make it possible for the Government of India to consult them and pay due weight to their views, there might be a case for the acceptance of Sir V. T. Krishnamachari's amendment. But we do not know at the present time how many units there will be or what the size of the smallest unit will be. If a unit is to consist of a few thousand or a few hundred people, the acceptance of Sir V. T. Krishnamachari's amendment would place us in a very difficult position. We

[Pandit Hirday Nath Kunzru]

shall be laughed at at international gatherings if we say that we cannot commit India without consulting units which are no better than big zamindaris. In view of this, Sir, I think the position that will be created by Sir V. T. Krishnamachari's amendment is impossible to contemplate. I am therefore, whole-heartedly for its rejection.

Sardar K. M. Panikkar (Bikaner State): Mr. President, Sir, I think there has been a very considerable amount of misunderstanding in the debate that has followed the motion by Sir V. T. Krishnamachari. The issue is not whether agreements reached at international conferences should be ratified by the Central Legislature or implemented by the Central Legislature. It is accepted by everybody that agreements entered into by India at international conferences must be ratified and implemented in the Central Legislature. Then what is the issue? The issue is that in order to do so it must be related to a federal item or an item in the concurrent legislative list so that the power for this legislation may be vested in the Central Legislature. Now the issue raised by Mr. Munshi and by Pandit Kunzru is that there are many conferences in which India has to go and take part, where decisions are arrived at and where it is not possible to consult all the units when we come back to legislate and give implementation to agreements arrived at. Here, I venture to say, there is a slight misunderstanding because if you take the question of the I.L.O. for example, which has been prominently mentioned, if you turn to the concurrent list, you will find that item 26 deals with welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalid pensions and old age pensions. Now, as long as that item is in the concurrent list, the right belongs to the Union Legislature to pass any law which it considers necessary whether in terms of any international agreement or otherwise to give effect to its policy. In the same way in regard to every matter of importance either in the concurrent legislative list or in the federal list. Therefore, the issue that arises is if the Union goes not merely to a recognized international conference as the U.N.O. or is a party to the I.L.O. as India may be, but say to the Moral Re-armament conference at Switzerland, are we in a position to give effect to the decisions? In order to do so, it is absolutely necessary that it must be related to a substantial item in the federal or concurrent legislative list and the federal or concurrent legislative lists have been made in such a manner as to include every possible thing which may be of common interest. So, what is left to the Provinces or States are purely matters of local administration, not of an all-India or of a common character. That being so, to entrust wide powers such as the enforcing of decisions by legislation, the implementing of any agreement or arrangement reached at international associations—itself a very dangerous definition, what kind of international association or conferences it is not mentioned—is most dangerous which will nullify every provincial and State constitution, because it is not limited to the subjects in the federal or concurrent legislative list. After all, Section 106 of the Government of India

Act, as it stands, specifically limits the power of implementing such decisions. I am as anxious as any other Member here that the Central Legislature should have ample powers to give effect to treaties and agreements reached with other countries. But in order to do so it must be related to one or other subject in the concurrent or the federal legislative lists. As item 14 stands, it is rather peculiarly worded. It reads—

> "Participation in international conferences, associations and other bodies and implementing of decisions made thereat."

If this relates to items which are in the federal and concurrent lists, then this clause is not necessary. If it relates to matters outside the federal or concurrent list, then this clause will completely nullify every legislative item in the Provincial list or in the list pertaining to the Units and therefore I shall strongly suggest that whatever you may want is in Item No. 16. You may make the position clear in regard to the I.L.O. and other conferences or associations of a recognized international character. I would very respectfully submit that to give any more powers, such wide and undefinable powers to the Central Legislature, would be to nullify every act of the Provinces and units and to give the Union the right to interfere in every sphere of power without having a proper legislative source to which this legislative authority can be traced. Therefore, I have pleasure in supporting the amendment which has been put forward by Sir V. T. Krishnamachari.

Sir B. L. Mitter (Baroda State): Mr. President, I wish to draw the attention of this Assembly to one aspect of this question which has not yet been touched upon. I agree with Sardar Panikkar that there is a certain amount of misunderstanding in this matter and reference has been made to Section 106 of the Government of India Act. Section 106 of the Government of India Act was enacted when India, as defined in that Act, was not an organic entity. India consisted of British India and the States and therefore special provisions had to be made in regard to the States. But now India is an organic entity. There is no distinction, so far as the outside world is concerned, between the Provinces and the States. Therefore any reference to the Government of India Act is not quite relevant.

Now, this item speaks about the implementing of decisions made at international conferences. Before you implement a decision, you have got to ratify it. The decision will come before the Central Legislature for ratification. Then, at the next stage, if the Central Government so decides that the ratification needs to be further implemented by legislation, then and then only does item No. 14 come into operation. Consider what is the nature of things likely to come before these international conferences for decision. They will be matters which are common to nations and matters which are of national interest and not of parochial interest. That being so, the chances are that anything outside the exclusive or concurrent list will not ordinarily come in for international decision. But supposing some matter of provincial

[Sir B. L. Mitter]

importance is embodied in an international decision. Then this question will be debated in the Central Legislature where the Unit will be represented and if there be anything in the nature of oppressiveness, naturally the Central Legislature will take account of it. Where is the risk, then, in empowering the Central Legislature with the implementing of international decisions?

My point, therefore, is this; that international decisions are likely to be taken on matters of national interest and common to many nations. India now goes to the international conferences as an organic entity and not as a collection of political units as under the Government of India Act. That being so, Sir, I do not see any risk in giving this power to the Central Legislature. I would request my Honourable friend Sir V. T. Krishnamachari to withdraw his amendment.

Mr. M. S. Aney (Deccan States): Mr. President, Sir, the item here has really raised a controversy which I thought would not be raised at all; but on the amendment standing in the name of Sir V. T. Krishnamachari being moved and another amendment in the name of Mr. Naziruddin Ahmed also, being moved, the controversy has assumed a form in which I find that certain fundamental aspects of this question are being obscured. Let us see what this item calls upon this House to do. It relates to participation in international conferences. So far as participation is concerned, I believe nobody seems to take any exception that it should be the right of the Central Government or the Dominion Government to send representatives to participate in these Conferences in the name of India. The real difficulty comes in regard to implementing those decisions. Now, as has been very rightly pointed out by my friend Sir B. L. Mitter, these decisions will be arrived at after consultation and deliberation at the international conferences. They will embody decisions on matters not taken in the interest of any particular part of this country or that country, but from the broader point of view of international usefulness and international benefit. The question is, when decisions of that nature, involving international considerations, are to be implemented, although they might be related to matters within the provincial sphere, are those decisions not fit subjects to be considered by the Central or Union Government? Units are intended to govern their territory in regard to certain matters purely from the interest of the persons living within the territory of the unit. Their view is therefore necessarily limited to a territorial nature, bounded by the geographical limits within which the units have to carry on their administration, but here there are decisions taken in which the world view is taken and therefore in the carrying out of those decisions the Central Government will be in a better position to see whether those decisions should be implemented or not, and even in the former case, what is the proper way to implement them so as to justify India before the civilised world. That is the stand point from which these decisions will have to be looked at. This is not possible, in my opinion, in the very nature of things if these

matters are left to be decided by Provinces or units. It is this body, the Central Legislature, I mean, which is in a position to take a broader and international view and therefore the authority for implementing those decisions must also vest in it. I think it is obvious to everybody that if India to stand as a whole, before the whole world, it is the Central Legislature only which can represent India before the world and it must be responsible for implementing those decisions also. In all affairs outside India, the authority is exclusively left to the control and administration of the Central Government and I submit this is a matter of that nature, *i.e.*, falling within the category of external affairs. International conventions are external considerations which affect the affairs inside the country. Therefore, in the natural course of things this should be a matter for the Central Government to decide and I am sure that Sir Krishnamachari will see that nothing is lost if he does not press his amendment and let the item stand as it is I therefore oppose the amendment.

Mr. T. Channiah (Mysore State): (*Spoke in Canarese*).

Mr. H. V. Kamath (C. P. and Berar: General). Mr. President, the Honourable Member knows English and I suggest that you request him to speak in English.

Mr. T. Channiah: I have got option to talk in any language I like (*continued to speak in Canarese*).

Mr. Shankar Dattatraya Deo (Bombay: General): Sir, we must at least be told in what language the Honourable Member is speaking.

Mr. President: My information is that he is speaking in Canarese. (Laughter).

Shri Mohanlal Saksena (United Provinces: General): How do we find out whether he is talking in Canarese or not?

Diwan Chaman Lall (East Punjab: General): On a point of order, Sir. Are there any arrangements for a translation to be made into some understandable language of the speech that my honourable friend is making?

Mr. President: There is no arrangement for translation. If an Honourable Member chooses to speak in his own language, I cannot prevent him. The other members miss the speech and the speaker himself is not in a position to influence the bulk of the members present here. So the loss is more on the side of the speaker than on the side of the members who do not follow him. I don't wish to interrupt any member who wishes to speak in his own language.

Mr. T. Channiah: Thank you, Mr. President (*continued to speak in Canarese*).

Mr. M. S. Aney: Sir, on a point of order. Are you in a position to know whether he is speaking relevantly or not?

Mr. President: I am not in a position to know whether he is talking relevantly or not. This is the third occasion when a gentleman has spoken in a language which is not understood by the bulk of the members present here. I allowed a member to speak in Telegu and another in Tamil and I thought I could not prevent a member who wished to speak in Canarese. I know that he will himself realize

[Mr. President]

that the speech he is making is not understood by the bulk of members and that he is therefore wasting his time. I would therefore request him to cut short his speech.

The Honourable Mr. B. G. Kher (Bombay: General): He is talking of the relations between the States and the Centre. I submit that has nothing to do with the subject we are discussing.

Dewan Chaman Lall: Rule 59 of the Rules of Procedure and Standing Orders of this Assembly says—"In the Assembly, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman may permit any member who cannot adequately express himself in either language to address the Assembly in his mother tongue". I submit that the Honourable Member is now taking advantage of this particular rule and he has no business to take advantage of it. He knows English. He has already expressed himself adequately in English and therefore he should not now be given an opportunity to speak in his mother tongue.

Mr. President: This Rule exists in the Rules of the other Legislative Assemblies also and there the members have been permitted to speak in their own languages even if the member could express himself in the English language. I would therefore allow him to express himself in his mother tongue. I would, however, request him to cut short his speech.

Shri Raj Krushna Bose (Orissa: General): In that case, when you allow the members to speak in a language which is not understood by the bulk of the members, the Chair will, at least, keep an interpreter by his side to know what the member is speaking about.

Mr. T. Channiah: (*concluded his speech in Canarese.*)

Mr. President: We have had enough discussion. I now ask Mr. N. Gopalaswami Ayyangar to reply, if he wishes to.

Mr. N. Gopalaswami Ayyangar: Sir, the two amendments that are before the House for consideration now are those of Sir V. T. Krishnamachari and Mr. Naziruddin Ahmed. In substance I think they raise the same issue more or less. So far as the merits of the amendments go, they have been sufficiently canvassed already by the speakers who have dealt with the matter before me. I do not wish to add anything of a material nature to the discussions that have taken place. The main thing for our consideration is whether, in the case of International Conferences, Associations and other bodies, the Federal Legislature should have power to legislate not merely for our participation in those Conferences and Associations but also for our implementation of the decisions arrived at at those Conferences and Associations.

Now, Sir, if, as has been conceded, it is very necessary in view of the new status that India has acquired in the International World that this country should speak with one voice at those Conferences and Associations and if it is also agreed that India should be a party to any decisions arrived thereat, it is to my mind important that steps should be taken by India as a whole for the implementation of such decisions. Ordinarily speaking, I agree with Sardar Panikkar's argument that the Federal Legislature should trace its powers of legislation in respect of matters decided at those Conferences only to specific entries in either the Federal List or the Concurrent List. That is so, but we have got to remember that we go to those Conferences not on behalf of the Federation as distinguished from the Units

of the Federation. We go to those Conferences as representing India as a whole, *i.e.*, the Federation and the Units combined, and, if we are empowered to subscribe to the decisions arrived at at those Conferences, it is only right that we should be in a position to implement those decisions which we agree to at those Conferences. It is no use our assenting to such decisions and coming back home to find that we at the Centre are unable to implement them, but have to remit those decisions to the various Units for the purpose of arriving at their own decisions in regard to such matters and either implementing those decisions or refraining from implementing them. Now, Sir, that would put India, as a country in the International World, in a very awkward position. There is of course the fact that, when we do reach decisions at those Conferences, those decisions are of varying degrees of importance. At many of those Conferences, only pious decisions are arrived at, but at others human freedoms are declared and so on. It would be difficult for us to attempt implementing every one of the resolutions that may be adopted at those Conferences; but what does this item really mean? It does not mean that every decision that is arrived at at those Conferences is necessarily to be implemented by legislation. It only means that, if it is decided that those decisions should be implemented, the Federation should have power to legislate about them. That is about all. Therefore, Sir, looking at it from that point of view, it seems to me that, if the House agrees to legislation for participation in such Conferences, it should also agree to its having power to implement such decisions as deserve implementation.

There is one other point I would like to mention. The proviso that has been suggested by Sir V. T. Krishnamachariar in respect of this item is really not a thing which should be accepted so far as the List of Items is concerned. I think really if that question is to be debated at all it must be by his giving notice of an amendment when the text of the Constitution comes up before the House and asking for a specific section, on the lines perhaps of section 106 of the Government of India Act, to carry out his object. To put a proviso of that sort into a mere enumeration of the list of items in respect of which the Federal Legislature is empowered to make laws is, I submit, not an appropriate way of bringing up that matter. I have nothing more to say.

Mr. President: I will now put the amendments to vote. The first amendment is the one moved by Sir V. T. Krishnamachari.

The question is—

That in item 14, the following be added at the end :—

"Provided that the Federation shall not by reason only of this entry have power to implement such decisions for a province or a Federated State except with the previous consent of the province or of the State."

The amendment was negatived.

Mr. President: Then there is the amendment of Mr. Naziruddin Ahmad.

The question is—

That in item 14 the following be added at the end:—

"on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such State."

The amendment was negatived.

Mr. President: I will put the original item 14 to vote.

The question is—

"That Item 14 be adopted."

The motion was adopted.

ITEM 15

Mr. President: I do not find that there is any amendment to this item No. 15. So I put it straightway to vote.

The motion was adopted.

ITEM 16

Mr. President: There is a notice of an amendment by Sir A. Ramaswami Mudaliar, Sir V. T. Krishnamachari, Shri M. A. Srinivasan and Shri C. S. Venkatachar.

Sir V. T. Krishnamachari: I withdraw the amendment.

Mr. N. Madhava Rau: I also withdraw my amendment.

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move that in item No. 16 the following be added at the end:—

"on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such State."

Sir, the matter has been fully debated and I do not wish to go over the ground covered already. I beg to submit one thing *i.e.*, in the debate on clause 14 Mr. Munshi almost gave away his case when he said that no action would be taken by the Centre without consultation with the units or with the States and that the Centre would never do anything behind their back. That is a very indirect concession that the Provinces and the States are entitled to be consulted. Then again, Mr. Ayyangar also said in a reply—I think it was with reference to proviso to amendment to Item No. 14—that this item was not the proper place to put it in, suggesting thereby, if I caught him rightly, that the same may be dealt with in the body of the Act itself in some appropriate form. These two speeches by two eminent men in the House indicate to me that they also felt the difficulty of their position. In fact the point is simply this. That Mr. Ayyangar and Mr. Munshi are very influential men of the Centre; let us suppose they go to an international conference and there they agree that all properties of the men in the street should be expropriated and distributed amongst the influential men.

The man in the street says : "You cannot do it without my consent". But the influential men say : "If you interrupt us in our noble pursuit at the International Conference, I think you are obstructing us". This is exactly the position. Although noble sentiments may lie behind this action, it is a question of the rights of the provinces and the States. The question is whether you can be permitted, even indirectly, even for the benefit of the whole of India, to circumvent the legislative safeguards of the provinces and the States by means of a proviso like this. I submit that the debate has not answered this difficulty which I feel. In fact the Provinces and the States have rights within their legislative competence being in List No. II that is, within the exclusive provincial jurisdiction or in the case of a State within a sphere on which they have not acceded. The question is whether the Centre should be permitted indirectly to encroach upon those exclusive spheres. Thus all the distinctions in the legislative list would be brought to nullity. On a question of principle I think that this should not be allowed to be done however laudable the motive may be supposed to be. All that I desire is that the List should be so amended or some sufficient safeguards should be introduced into the body of the Constitution that in going to an international conference previous discussion with the province or State should take place and their consent taken and then the Centre should send their representatives to such conferences. It would be absurd to go there without this formality. This seems to me to be absolutely simple and straightforward and absolutely legal. I do not know why in the name of efficiency and good name of the Centre this encroachment should be resorted to. I think the point which I made is based upon sound constitutional reason and something should be done to provide against acts being done by the Centre behind the back of the Units on their exclusive subjects.

Mr. Alladi Krishnaswami Ayyar (Madras : General) : Though a decision of the House on item No. 14 makes any speech on Item No. 16 unnecessary, I should like to say a few words in view of the statement made that unless the treaty or the agreement is implemented by the province the treaty or agreement must have no sanction and there is also a suggestion thrown out that adequate provision should be made in the Constitution on the lines of section 106 of the Government of India Act. I submit, Sir, that as has been pointed out by Sir B. L. Mitter, the reasons for the enactment of Section 106 of the Government of India Act no longer exist and the Central Legislature must have the power to implement the treaty or the agreement that has been entered into with foreign powers. There is nothing novel in a provision of that description. Almost in every federal constitution in spite of any division of powers between the Centre and the Provinces, notwithstanding the fact that the treaty may encroach upon what might otherwise be a provincial power, the treaty perforce has a binding force and the Centre has the power to implement the treaties notwithstanding the fact that but for the treaty the subject-matter would be in the domain of the Provinces.

I would only refer to a few parallels. In the American constitution also, there is a division of powers between the Centre and the

[Mr. Alladi Krishnaswami Ayyar]

States. The residuary power is in the States and yet it has been uniformly held that if in the exercise of the treaty-making power the United States Central Government enters into a treaty with a foreign power, the treaty is binding on the States notwithstanding the fact that the subject-matter of the treaty may otherwise fall within the domain of the States. In fact, the provision in the American constitution goes to the extent of stating that the treaty shall be the supreme law of the land. That is the position in America.

In Australia also, the residuary power in the States and the powers of the Centre are confined to a few specific matters. And yet, if the Centre enters into a treaty or an arrangement with a foreign power in the exercise of its power under External Affairs, the treaty is perforce binding upon the States and it is not open to a State to challenge the treaty or the law implementing the treaty on the ground that in the normal course of things, it would fall within the purview of the States.

In Canada, there has been a sharp difference of opinion in the decisions of the Judicial Committee in appeals from Canada. But the preponderance of Canadian national opinion is in favour of the view that the Centre must be in a position to implement the treaties entered into by the Dominion as a member of International Society and it is not open to the province to say that because particular matters are in the normal course within the provincial sphere, the treaty is not binding on the provinces. So far as the decisions are concerned, there is no doubt a difference of opinion. But, as I have stated, the preponderance of influential and national opinion in Canada is in favour of giving force to the treaty.

In these circumstances, having regard to the peculiar nature of Indian conditions, the multifarious States that exist and the number of Units that are going to comprise this Union, this country must have a right to enter into a treaty and implement that treaty. But, of course, our statesmen must be on the guard in entering into an unconditional treaty. They must make the necessary reservation and they must see that until our legislature implements the treaty, it shall not be binding, or they may make other reservations in consultation with the Governments of the Provinces and of the Centre. Otherwise, the Centre will be stultifying itself in any treaty arrangement. I am making these observations in view of the frequent references that were made to section 106. In supporting the retention of this item I proceed on the footing that there will be no such provision as section 106. Apart from treaties, the case of international conferences or what might be called a kind of agreements entered into in international conferences may stand on a different footing.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I was also of the view that a provision should be made in the constitution in terms of section 106 of the Government of India Act. But, on reconsideration, I find that it will involve this country in a series of troubles; they will not be able to represent our case in international conferences and even with respect to foreign countries where we have entered into treaties or agreements. There is no doubt danger in

allowing the Centre a free hand in this matter without consulting or taking the consent of the various provinces or units. The Units may be too large in number and it may not be possible to consult every one of them or take their consent before the decisions are implemented. These are the two sides of the picture. A middle course must always be found and that can be done by way of a convention.

I find, Sir, that all treaties and agreements that are entered into, except those which are entered into with foreign countries on political matters, the other agreements, trade agreements, and decisions by international conferences are all, before implementation, brought before the Central legislature and without its consent, or ratification, they are not given the sanction of law. Therefore, there is at least one legislature in this country which accepts these decisions and gives them the sanction or force of law. The only question is whether with respect to provincial matters, the provincial legislatures must have a voice or not. That will be impossible having regard to the fact that the number of units is too large. There is the International Conference on Food and Agriculture in Geneva. I know as a matter of fact the provinces have not been consulted, one at least of the provinces has not been consulted, regarding the representatives that had to go and what instructions had to be given. If, over the head of the provinces, representatives are sent to these international conferences, without the consent of the provinces and without the provinces giving any particular directions to these representatives as to what these representatives should press at these conferences, it is practically ignoring them both in the beginning and in the end, before the representatives are sent and after decisions are taken. This difficulty arises only with respect to provincial subjects. If the provinces are treated with scant courtesy in the matter of choosing representatives and in giving directions to the representatives, and, after the representatives come back with particular decisions which have been taken at these international conferences, the provinces or units have no say in this matter, it is a regrettable matter. In practice, the Centre does not consult the various units. I do not want a legislative provision tying up the hands of the Centre and preventing it from implementing the decisions. If there is to be such a provision, the Centre will be stultifying itself before the eyes of the world and to that extent I agree that this amendment ought not to be allowed.

But, in practice what ought to happen is this. An Inter-provincial Council or an All India Council must be established with respect to these matters where international conferences are generally held, health, education, labour and other matters. Whenever representatives are asked to be sent to conferences, this council must have a voice. There must be representatives of provincial Governments and units. They must be consulted in the choice of representatives. The representatives must consult them and obtain directions as to what they should say on behalf of the Government and on behalf of the various provincial Governments also with a united voice. After they return, they must report to this inter-provincial or All India Council and take their decision. After the decision is arrived at, that decision must be implemented by the Centre. This would avoid a number of inconveniences which would arise out of making a statutory provi-

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sion for obtaining the consent of the units. It would not be desirable to ignore the Governments of the units and the various provinces altogether. A middle course must be adopted; but it need not be by statutory provision; it may be by a convention. For these reasons, Sir, I am not in favour of the amendment. Nor am I in favour of a provision like section 106 of the Government of India Act to be incorporated in the body of the Act. But the Centre must bear in mind that immediately an All-India Council, with respect to the various items or matters that come up in these international conferences and which are in the provincial list, must be established and this council must be consulted in the matter of sending representatives, in the matter of giving directions, and after the decisions are taken, in the matter of implementing them before they are ratified by the Central legislature.

Mr. N. Gopalaswami Ayyangar: Sir, a good deal of what has to be said on the amendment before the House has been said already both during the debate on it and during the debate on item 14. I wish only to meet one point which was raised by Mr. Naziruddin Ahmad. It is this. He wanted that if this amendment was not accepted in relation to this item, some other provision should be made at least in the body of the constitution embodying the substance of this amendment. Now, Sir, in connection with the debate on item 14, I took the point that, if the proviso which was moved to that item as an amendment had to be considered at all, the substance of it, it should not be in connection with that item, but might be brought up as an amendment to the body of the constitution when that came before the House for consideration. I wish however to make it clear that that statement of mine was intended merely as an indication of the correct procedure that should be followed. I wonder if—I have been rather thinking that—in the minds of some members, there is a lurking feeling that I myself suggested the inclusion of something on the lines of section 106 in the body of the constitution. That was not my point. I only said that if such a thing happened it must be with reference to the text of the constitution. On the merits of putting in a provision of that sort in the body of the constitution I have absolutely no doubt in my mind that so far as item 16 is concerned there is no case for such a provision in the conditions of this country. I agree with Mr. Alladi Krishnaswami Ayyar in the point he made on that question. That being so I am afraid I must oppose Mr. Naziruddin Ahmad's amendment, and I cannot hold out before him any prospect of my agreeing to accept an amendment even to the text of the constitution on the lines of his amendment here or on the lines of Section 106 of the Government of India Act, 1935.

Mr. President: I will now put the amendment to vote.

The question is:

"That in item 16 the following be added at the end:

"on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such State."

The amendment was negatived.

Mr. President: The question is:

"That item No. 16 be adopted".

The motion was adopted.

ITEM 17

Mr. President: There are two amendments of which I have notice and both of them are to the effect that the item be deleted.

Sir V. T. Krishnamachari: I am not moving my amendment.

Mr. Naziruddin Ahmad: I am not moving my amendment.

Mr. President: The question is:

"That item No. 17 be adopted."

The motion was adopted.

ITEM 18

Mr. President: Mr. Madhava Rau.

Mr. N. Madhava Rau: I am not moving my amendment.

Shri Himmat Singh K. Maheshwari: Mr. President, Sir, I beg to move:

"That in item 18 the following be inserted at the end:

'raised by the Federation.' "

The object of this amendment is to have the position made clear whether foreign loans referred to in this item will be loans raised by the Federation only or whether it is intended that units or private concerns or private individuals should have no right whatsoever to raise a loan in a foreign country. The item as it stands does not make its scope clear. I shall therefore be grateful if some light is thrown on the exact scope of this item.

Mr. A. P. Pattani (Western India States Group): Mr. President, the amendment that has been moved, as far as I can understand, suggests that not only the Federal or Central Government but the units should be able to raise foreign loans. I think that is a very dangerous power to give to the units, especially in the light of the previous item on the Federal List where the Federal Government is taking responsibility to meet grave economic crises in any part of the country. If a unit, that is to say a Province or a State, is permitted to raise loans in any foreign country and create economic difficulties for the Federation it will be very hard on the Federal Government. I therefore request the mover of the amendment kindly to withdraw it.

Mr. N. Gopalaswami Ayyangar: Sir, the mover of the amendment wanted some elucidation of what was covered by this particular item. The words 'foreign loans', I think, are a fairly clear description of what is intended. Apparently the object of the amendment is that the power of the Federal Legislature to make laws should be confined to foreign loans raised by the Federation. I am afraid, Sir, that I cannot agree to that position. The Honourable the mover of the amendment was referring to the case of units being at liberty to raise such loans in foreign countries. I do not think the Centre can agree to a unit, without reference to the Centre, proceeding to raise a loan in a foreign country. If it has to do so, it must get the consent of the

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Centre and perhaps must act through the Centre in raising such a loan, if it is otherwise unobjectionable. This item is intended to give complete power to the Federation to control the raising of foreign loans.

Shri Himmat Singh K. Maheshwari: What about a private concern or a private individual?

Mr. N. Gopalaswami Ayyangar: If the Federal Legislature considers it necessary to place restrictions or regulate the raising even of such loans, the power will be there. But whether it should be exercised at all, or whether it should be exercised in certain circumstances will be a matter for decision by the Federal Legislature.

Mr. President: I shall put the amendment to vote.

The question is:

"That in item 18 the following be added at the end:

'raised by the Federation.' "

The amendment was negatived.

Mr. President: The question is:

"That item No. 19 be adopted."

The motion was adopted.

ITEM 19

(Mr. Krishnamoorthy Rao and Shri Omeo Kumar Das did not move their amendments.)

Mr. President: The question is:

"That item No. 16 be adopted."

The motion was adopted.

ITEM 20

Shri Himmat Singh K. Maheshwari: Sir, I move:

"That in item 20 the following be added at the end:

'subject to existing agreements between one Unit and another.' "

The subject of extradition formed part of Item No. 3 of the Government of India Act, 1935 relating to External Affairs. The exact item stood thus:

"External Affairs: The implementing of treaties and agreements with other countries: extradition, including the surrnder of criminals and accused persons to parts of His Majesty's Dominions outside India."

In this context, Sir, extradition apparently related only to extradition from and to foreign countries. In the present List, Sir, the subject of extradition has been separated from other subjects dealing

with foreign affairs. For instance, we have item No. 11 dealing with foreign affairs and we have item 14, 16 and others dealing with foreign matters. By putting this subject "Extradition" into a separate item the implication is that the Federal Legislature will have the right to legislate not only regarding extradition from and to foreign countries, but also in matters relating to Units, i. e. that existing agreements between Units, between States and Provinces, between one Province and another will be affected adversely. I am not sure what the intention was in putting this as a separate item. But I imagine it cannot be that the existing arrangements between States and Provinces are going to be replaced or disturbed by taking over the subject as a Federal subject. In any case, Sir, I would like to have light thrown on this.

Mr. President: Does any one wish to speak about this?

Mr. Naziruddin Ahmad: Mr. President, Sir, I should think that one point requires clarification. Extradition is a subject on which it seems to me that the States are not acceding. In that case, when any legislation or any executive action is intended, the question arises as to whether the States should be consulted or their consent taken. This is a matter which requires clarification.

Mr. N. Gopalaswami Ayyangar: Sir, I do not think that there was any mysterious purpose behind the List on this item of Extradition being separated from the group of items which are included in a single entry in the Federal List of the Government of India Act. As a matter of fact, that particular entry is so jumbled up that we thought that extradition, being an important matter in itself, should be separately listed.

As regards the point that was raised by the mover of this amendment, and also the question of clarification, that was raised by Mr. Naziruddin Ahmed, I have only to say this. Ordinarily speaking, extradition arrangements are a matter between one State and another, the two States being in essential respects independent in the exercise of their respective jurisdictions. There are Federations in the world where extradition arrangements exist between one Unit and another inside the Federation. I believe there are Federations in the world where the question of the matters that should be provided for by extradition is dealt with in a much easier manner than the formal way in which extradition has to be accomplished as between one independent State and another. But whether it is the one or the other, extradition is really a matter of agreement between the two States which enter into these arrangements. The entry of extradition as an item in the Federal List does not necessarily abrogate any agreements or arrangements that may exist. It is possible that, when a law is passed, it will probably provide, as the present extradition enactments do provide, for the entering into of agreements between one State and another, and if extradition has to be provided for as between one Unit and another of the future Federation of India, I am sure that that law will make a similar provision. As to whether the power to make that law should be restricted by the words that the honourable the mover has suggested, namely, "subject to existing agreements between one Unit and another" that question is one as to which I am not prepared to give an affirmative answer. Those agreements will be entered into

[Mr. N. Gopalaswami Ayyangar]

under the provisions of the law that may be made. I cannot anticipate what those provisions will be; that is a matter for the future. But whether existing agreements should continue or whether modified agreements should be entered into, should be left to the administration of the law that may be enacted in future. It may be taken for granted, however, that, when extradition is provided for, the States entering into extradition arrangements have got to be consulted and it is only ordinarily by consent between the States entering into that arrangement that the arrangement can come into existence. This being so, Sir, I would suggest that the Hon'ble Mover of the amendment need not press his amendment.

Shri Himmat Singh K. Maheshwari: Sir I beg leave to withdraw my amendment.

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

Mr. President: The question is:

"That Item No. 20 be adopted."

The motion was adopted.

ITEM 21

Mr. President: We come to item No. 21. I do not find there is any notice of amendment to this item. So I will put it to vote.

The motion was adopted.

ITEM 22

Mr. President: Item No. 22.

Sir V. T. Krishnamachari: Sir, the object in setting down this amendment (That Item No. 22 be deleted) on paper is to seek a clarification whether this means jurisdiction over nationals of this country in other countries, or whether it means anything more than that. That is the point on which we seek clarification.

Mr. President: There are two amendments of which I have notice, both to the same effect, one by Mr. Naziruddin Ahmed and the other by Mr. Himmat Singh Maheshwari.

Shri Himmat Singh K. Maheshwari: Sir, I have nothing to add to what Sir V. T. Krishnamachari has said.

Mr. N. Gopalaswami Ayyangar: Sir, my answer to Sir V. T. Krishnamachari's question is that foreign jurisdiction is jurisdiction exercised in another country over the nationals of this country. Not merely that. The power to exercise the jurisdiction can be taken only if we have the consent of the government of that foreign country. Therefore, what this item really means is that, when we have the permission of that foreign country to exercise jurisdiction over our own nationals in that country, we make laws for the purpose of governing the relations between our own nationals who happen to be in that country.

Sir V. T. Krishnamachari: Sir, in view of what Mr. Gopalaswami Ayyangar has said, I beg leave to withdraw my amendment.

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

Mr. President: Then I put this item to vote.

The motion was adopted.

ITEM 23

Mr. President: We now come to item No. 23. I do not find there is any amendment to this item.

Shri M. Ananthasayanam Ayyangar: I only want to make a suggestion. Item 23 says:—

"Piracies, felonies committed on the high seas and offences committed in the air against the law of nations."

I want to suggest the deletion of the words "in the air". Sir, this entry was lifted bodily from a similar article in Sec. 8 of the American constitution where the words are the same item by item and word for word. But in that article there is reference to piracies, felonies committed in the high seas and offences against the law of nations. There is no restriction to offences committed in the air. There is no reason to discriminate against the offences committed on the high seas against nations and offences committed in the air. I believe these words have been put in by inadvertence, and may be omitted and this item may fall in line with the similar provision in the United States of America constitution. I would place this suggestion before the Assembly for its consideration.

Mr. N. Gopalaswami Ayyangar: Sir, I see the point that was attempted to be made by Mr. Ananthasayanam Ayyangar; but I am not so sure that we should keep entirely to the language of a constitution that was made, I believe, 160 years ago. So I think I would meet his main object if he will agree to the alteration of this item as follows:

"Piracies, felonies and offences against the law of nations committed on the high seas or in the air."

Shri M. Ananthasayanam Ayyangar: That will meet my point.

Mr. President: I take it that the House will permit Mr. Gopalaswami Ayyangar to recast this item in the way he has just now suggested.

Then I put this item, in the form he has put it, to the vote of the Assembly.

Item 23, as amended, was adopted.

ITEM 24

Shri Himmat Singh K. Maheshwari: Mr. President, Sir, I beg to move that for item 24 the following be substituted:—

"Subject to the existing laws of a Federated State, admission into, and emigration and expulsion from, the territories of the Federation, pilgrimages to places outside the boundaries of India as they stood before the 15th August, 1947."

Sir, I have two objects in view in moving this amendment. Firstly, certain States have got laws in existence for regulating the admission of foreigners into and emigration and expulsion from their territories. If the Federation takes over this subject completely, that is to say, to the exclusion of the jurisdiction of the Unit, then the power of the Unit to take prompt action will be removed, much to the

[Shri Himmat Singh K. Maheshwari]

detriment of the maintenance of law and order. Whatever provision, therefore, Sir, is made to give the Centre power to direct the admission and emigration and expulsion from the territories of the Federation, I think it has got to be subject to one condition, namely, that the discretion of the federating State in this matter should not be interfered with.

The second point that I want to make is that pilgrimages to certain places like the Gurudwaras in Pakistan and the Shrine of Khwaja Moinuddin Chishti in Ajmer are not subjects which need be dealt with by means of legislation by the Centre.

After all, a gurudwara may be only ten miles away from a village in India and it would be, I hope, a very common occurrence in future for people from one Dominion to cross over into the other for a religious purpose like this without let or hindrance. Similarly, I don't see why there should be any restrictions placed on the visit to a place like Ajmer of Muslims living in Pakistan. I therefore hope, Sir, that these two points will be very carefully considered and that the reply of the framers of the Report will be reassuring on the subject.

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

"That in item 24, the words 'pilgrimages to places beyond India" be numbered separately as one specific item, namely, item 88, or that it may be added as 24-A."

Now, Sir, this is an amendment which is very simple, modest and innocent. To me, Sir, it appears that this aspect is the most important aspect of our constitution. But unfortunately it has been given a very insignificant place in the constitution. I therefore request the Hon'ble Mover to agree to it, as has been rightly done in the provincial list, item 14. And in doing so, Sir, I think the Hon'ble Member will not have any difficulty because we have also done it as regards item 27 of the provincial list. In the Government of India Act, the matters referred to in item 26 and 27 have been included in one, i. e. item 27, and it has been separated here in the provincial list. I therefore submit that if this matter, i. e. the pilgrimages to places outside India is given as a specific item, there will be no difficulty. Lastly, I submit that in item 24, the first part of it has got no concern whatsoever with the second part, to which my amendment refers. With these few words, I request the Hon'ble Mover to make his heart and mind more flexible towards this amendment and accept it.

Mr. A. P. Pattani: Mr. President, the powers sought under item 24, as I understand, relate very much to powers taken under item 21 also. It will be very necessary, I believe, for the Union Government to regulate movements of aliens in our country and there is a suggestion I would like to add to this item 24 as it stands. This item refers to, "admission into and expulsion or emigration from the territories of the Federation". My suggestion relates only to questions of "admission into and expulsion from". It is possible there may be some areas of the country, or rather States, that have not acceded to the Federation. I suggest, Sir, that Mr. Gopalaswamy Ayyangar may kindly note that in any agreements that are arrived at with such

States, provision should be made that aliens should be excluded or expelled if they are undesirable to the Federation. I say this because, the old Government, under paramountcy, had taken power to exclude such aliens from India should they seek asylum in Indian States. We are always anxious to speak much against paramountcy, and I did not like it myself, but it is a thing that arises of its own accord for the defence or rather for the proper looking after of our own country. So, I request a note be made that in making any agreements with States that have not acceded to the Union, there shall be provision to exclude aliens not merely from the territories of the Federation but from India if those aliens are undesirable to the Union.

Mr. N. Gopalaswami Ayyangar: Sir, as regards Mr. Himmatsingh's amendment, I have not very much to say, but it is important, I think, that the power of the Federation to make laws in respect of "admission into, emigration or expulsion from the Federation" should be absolute. The main reason why that is necessary is that the Federation is responsible for maintaining the integrity of India, preserving its internal security, providing for its defence and so on. An authority charged with these heavy responsibilities should have absolute power to make laws controlling immigration and expulsion from the territory. Mr. Pattani drew my attention to the fact that it is possible that some of the States might not have acceded and that it is important, in entering into any political relations with them, to make sure that a condition is imposed upon them in the terms more or less of this particular item.

I am sure, Sir, that those in the Government of this country who will be responsible for relations with Indian States in the future, whether acceding or non-acceding States, will keep this very important point in mind and make the necessary provision.

Sir, the other amendment by Mr. Mohammad Tahir is purely a question of cutting up this item into two. What he has argued is that pilgrimages to places beyond India have very little relation to the rest of this item. One possible justification for lumping these two things t[illegible]s would be that pilgrimages outside India are a form of temporary emigration but I do concede that it is not necessarily a matter which should go with the rest of this particular item. I am quite willing to have it listed as a separate item though I hope the House would forgive the framers of this list of Union Powers if that means an addition to the 87 items that already exist!

Mr. President: I put these two amendments to vote, one after another.

Mr. Mohd. Tahir: I withdraw my amendment.

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

Mr. President: There is one by Mr. Himmatsingh Maheshwari as follows:—

"Subject to the existing laws of a Federated State, admission into, and emigration and expulsion from, the territories of the Federation, pilgrimages to places outside the boundaries of India as they stood before the 15th August 1947."

I put it to vote.

The amendment was negatived.

Mr. President: Now I put item 24 to vote.

The motion was adopted.

ITEM 25

Mr. President: Now, we will go to item 25. (Messrs. R. K. Sidhwa, M. S. Aney, and Naziruddin Ahmed did not move their amendments). Then there is no amendment to item 25, and I put it to vote.

The motion was adopted.

ITEM 26

Mr. President: Now we take item No. 26. There is only one amendment by Mr. Himmat Singh Maheshwari.

Shri Himmat Singh K. Maheshwari: Mr. President, Sir, I beg to move that in item 26 the following words be inserted at the end—

"subject to the right of a Federated State to levy and to vary from time to time customs duties on its own frontiers."

Customs duties in most States form a very substantial part of the income of the States and if the intention is that States should not levy any customs duty, I can say without hesitation that the power of the States to efficiently administer their area will be completely lost. Without finances no State will be able to run its schools and hospitals and if this important item disappears, I am afraid the finances of most of the States, even the bigger ones, are likely to collapse. I hope therefore that this amendment will receive serious consideration and be accepted.

Mr. N. Gopalaswami Ayyangar: Sir, there are two items in this list which are relevant to be considered in connection with the amendment that has been moved. The first is item 26 which we are considering now. The other one is item 71 'Duties of Customs including export duties'. Now, Sir, if the amendment has reference only to the right of a Federated State, situated on the Frontier of the Federation, to continue to levy its own Customs duties, this particular amendment would more relevantly come up for consideration under it. I should say, Sir, that item 26 refers only to legislation which has reference to import and export across customs frontiers. As there is a separate item relating to the levy of duties of customs, I take it that any Court will interpret this item 26 as not covering the levy of duties of customs, assuming that item 71 is also going to remain in our list. So, on that ground, this amendment does not call for consideration at the present moment. Mr. Himmat Singh, however, raised another issue of some importance and that was the right of a Federated State to levy and to vary from time to time customs duties on its own frontier. These frontiers may not be the frontiers of the Federation. They might merely be frontiers between one State and another or one State and the rest of India. With regard to the continuance of these rights, the whole thing will depend upon what conclusions we reach as regards the distribution of financial resources between the Federal

[Mr. N. Gopalaswami Ayyangar]

Centre and the Federal units. That also will come up later for consideration in connection with this report. I might say, in order to remove any possible misapprehensions that may be in the minds of representatives of States, that, if on account of powers taken by the Federation as regards customs duties in general, even customs duties between the frontiers of one unit and another, the financial equilibrium of a unit gets upset, the Federation is not likely to run away from the responsibility of making that unit solvent. That is as much as it is necessary for me to say at the present moment. If any proposals of this kind should be made at the time we come to consider the distribution of financial resources, I shall elaborate this particular point. In view of this I hope Mr. Himmat Singh K. Maheswari will not press his amendment.

Mr. Himmat Singh K. Maheswari: As this subject is to come up again, I do not press my amendment.

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

Mr. President: The question is:

"That item 26 be adopted."

The motion was adopted.

Mr. President: I have received a letter from two Members asking for an opportunity to discuss the situation that has arisen in some parts of the country in the Punjab. There is a suggestion in that letter that the Report of the Committee, which was appointed the other day to define the scope of the working of the Constituent Assembly and the Legislative Assembly, has been made to me and that I am not bringing it up before the House. I desire to assure Members that I have not received the report, whatever may have appeared in the newspapers. Therefore I am not in a position yet to decide how the Assembly can function in its two aspects. As soon as I get the report, I shall give an opportunity to the House to discuss it and therefore we shall take such action as may be considered necessary in the light of the report.

The House stands adjourned to Ten of the clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 26th August 1947.

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Volume V
No. 7

Tuesday
26th August
1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Price 5 Annas

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 26th August 1947

The Constitution 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 OF THE PLEDGE

The following member took the pledge:

Mr. S. K. Patil.

Mr. President: We shall now take up the consideration of the items of List I.

Mr. H .V. Kamath (C. P. & Berar: General): Mr. President, permit me, Sir, to invite your attention to an incident which took place on the historic midsummer night of August 14-15. I must apologise to you, Sir, and to the House for harking back on old times, but in view of the intrinsic importance of the matter, I will request you to condone the delay in bringing it to your notice. You will be pleased to recollect, Sir, that on the night of the Assumption of Power Ceremony, the first item of the agenda was the singing of the *Vande Mataram*. Some of us in this House noticed that a number of our Honourable friends entered the Assembly Chamber—I would almost say trooped into this Hall—after the song had been sung. I would request you, Sir, to look into this matter, because there are certain considerations which arise from this action of theirs. They entered the Hall simultaneously, so simultaneously that it gave the appearance of the act having been performed not so much by accident as by design. You will be pleased to remember that the Assembly had resolved to leave this mater of programme entirely in your hands and they were in duty bound as members of this House to participate in the programme. My friends all very well know that this song, though it has not been adopted by this House as our National Anthem, yet it is a song, Sir, which has been hallowed, which has been consecrated, sanctified by the suffering and sacrifice, blood and tears, and the martyrdom of thousands of our countrymen and women. I shall be happy to hear from those members who came after the National Song had been sung that they did so not by design, but only by accident. Thank you.

Shri Balkrishna Sharma (United Provinces: General): Mr. President, I am really pained to see this matter being raised by an honourable friend of mine for whom I have great respect and love. As a matter of fact, Sir, most of us did feel that the behaviour of some of our colleagues in this House was not quite in the fitness of things. Yet, we here cannot force anybody.....

Shri L. Krishnaswami Bharathi (Madras: General): May I rise to a point of order, Sir? I do not know what we are talking about. I have found on many occasions some members stand up without any motion before the House. You have been so good, Sir, as to permit that kind of thing. But I do not know if it is proper for a member to stand up and talk without being called by you. There must be a definite motion before the House on which we can talk. Therefore, I think it is a most improper procedure for some members to stand up without any motion before the House and therefore, I want your ruling on this.

Some Honourable Members: Order, order.

Mr. President: I think the matter should now be closed. We have heard from Mr. Kamath what he had to say. We have also heard something from Mr. Balkrishna Sharma. I do not know what can be done by pursuing the matter further. I think we had better drop it there.

We shall take up now the items. The next item is Item No. 27.

UNION POWERS COMMITTEE REPORT—*Contd.*

Item No. 27

Shri K. Santhanam (Madras: General): Sir, I beg to move the amendment in my name in list No. VII, rather than the one in list No. I. I have given a revised amendment.

Mr. President: Yes.

Shri K. Santhanam: I beg to move:

"That in item 27 after the words 'other institution' the words 'financed by the Federation wholly or in part and' be inserted."

The reason for this amendment is that the Central Government is authorised by this item to declare by federal law any institution to be an institution of national importance. There may be many institutions built up wholly by private or provincial funds. It will not be fair for the Central Government to come down on one of them and say that it is going to be an institution of national importance. The consequences of that declaration may be that while that institution is serving the needs of a particular locality or a particular section of the population, it will become an all India institution available to the whole country. I realise there may be an advantage in such declaration with respect to certain institutions. But this power should be confined to those institutions which have been financed wholly or partly by the Central Government. It is only then that the Central Government will be entitled to declare the institution to be an institution of national importance. I beg to move the amendment, Sir.

Mr. President: Mr. Pataskar, you have got an amendment exactly in the same terms.

Mr. H. V. Pataskar (Bombay: General): Sir, in view of the amendment moved by Mr. Santhanam, I do not propose to move mine. If I may be allowed to point out, this item 27 corresponds to item 11

in the Government of India Act, 1935. There also it was provided that any such institution must be financed by the federation.

(I support the amendment, and do not move mine.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to move:

"That in item 27 after the words 'and any other' the word 'similar' be inserted, and for the words 'declared by Federal Law to be an institution of national importance', the words 'controlled or financed by the Federation' be substituted."

Sir, the effect of this amendment would be to bring it exactly on the same basis as item No. II of List I in the Government of India Act from which the idea has been taken. Some changes have been made here. But I should submit that the text as given in the Government of India Act is slightly better. The effect of my amendment would be that it would extend the operation of the item to any other similar institutions. The word 'similar' is very important as it will give some idea as to the nature of the institutions which can be brought into operation of this item by the Federal authority.

The next change I desire to effect is to the effect that I want to delete the words "declared by federal law to be an institution of national importance" and instead of that, I want to substitute "institutions controlled and financed by the Federation". I submit the requirement of a declaration by Federal Law is unnecessary. As the item is included in List I, the Federation will have automatically the power to make laws. So, the provision that a thing has to be declared by the Federal law seems to be unnecessary because the power to legislate on this item would be implied. Instead of that, the words "controlled and financed by the Federation" would be better because that would be more appropriate. This is the effect of the amendment. This is clearly of a drafting nature and it does not seriously alter the purpose and scope of the item. With regard to Mr. Santhanam's amendment, I am in agreement with the spirit of the amendment.

Mr. Himmat Singh K. Maheshwari (Sikkim and Cooch Behar States): Mr. President, Sir, I beg to move:

"That in item 27 after the words "any other institution" the words "in a province" be inserted".

I suggest, Sir, that institutions of this kind in Indian States should be left alone. Otherwise, there will be no end to the amount of interference that can be practised under cover of an innocent looking provision like this.

Mr. President: These are the amendments I have notice of. The amendments and the original item are now open to discussion.

(No Member rose to speak.)

Mr. President: It seems nobody else wants to speak. Mr. Gopalaswami Ayyangar, do you wish to say anything?

Mr. N. Gopalaswami Ayyangar (Madras: General): Sir, I accept Mr. Santhanam's amendment to the effect that "after the words 'other

[Mr. N. Gopalaswami Ayyangar]

institution' the words 'financed by the Federation wholly or in part and' '' be inserted.

With regard to Mr. Naziruddin Ahmad's amendment I might say that the word ''similar'' was changed into the words ''any other'' deliberately, because the institutions referred to in item 27 specifically are the Imperial Library, the Indian Museum, the Imperial War Museum, and the Victoria Memorial. These, it was considered, were not sufficiently indicative of the kind of institutions that the Federation might choose to help financially and which the Federal Legislature might consider to be institutions of national importance. It is necessary, Sir, that we should not have the restrictive adjective ''similar'' in this connection.

The other point in Mr. Naziruddin Ahmad's amendment is that the language used in the Government of India Act, Item 11, is more appropriate. The difference between that language and the one which has been used in this item is that instead of saying ''financed wholly or in part by the Federation'' you will have the words ''controlled or financed by the Federation''. So far as the latter part is concerned, it is practically the same as Mr. Santhanam's amendment. The use of the words ''controlled or'' would bring into the purview of this item institutions which may not be financed either wholly or in part by the Federation but which the Federation might seek merely to control. The whole idea behind Mr. Santhanam's amendment is that the Federation should not legislate about any institutions of the kind which are not financed wholly or in part by the Federation. Therefore it seems to me that in order to subserve the object of the amendment which has been accepted it is not possible for me to accept the language used in the Government of India Act.

As regards Mr. Himmat Singh Maheshwari's amendment I am afraid he is unduly sensitive about the Federation encroaching on the province of the Indian States. I would ask him to realise how much he may stand to lose in Indian States if we excepted institutions of the kind located in Indian States from the financial help that such institutions may expect from the Federation, if the item stood as it is. I may assure him that there is no attempt behind this item to clutch jurisdiction over institutions, in Indian States; if the rulers and the peoples of the Indian States are willing to run institutions of this kind and finance them wholly themselves, I do not think the Federation will be anxious to exercise any jurisdiction over those institutions. But it may be that the people of the Indian States would stand to benefit greatly by looking for help to the Centre in regard to institutions of national importance which neitner they nor their rulers have got the financial capacity to maintain at the proper standard. I think, Sir, it will be to the benefit of the Indian State that they allow this item to remain as it is.

Mr. President: The first amendment which has been moved and accepted by Mr. Gopalaswami Ayyangar is Mr. Santhanam's.

The question is :

"That in Item 27 after the words 'other institution' the words 'financed by the Federation wholly or in part and' be inserted."

The motion was adopted.

Mr. Naziruddin Ahmad: Sir, may I be permitted to withdraw my amendment?

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

Mr. President: Then there is Mr. Himmat Singh Maheshwari's amendment. The question is :

"That in item 27 after the words 'any other institution' the words 'in a Province' be inserted."

The amendment was negatived.

Mr. President: The question is :

"That item 27, as amended by Mr. Santhanam's amendment, be accepted."

The motion was adopted.

Item No. 28

(No amendment to Item 28 was moved.)

Mr. President: The question is :

"That Item 28 be adopted."

The motion was adopted.

Mr. President: There is a motion in the name of Mrs. Renuka Ray that after item 28 a new item 28 (A) be added.

Mrs. Renuka Ray (West Bengal : General) : Sir, I do not desire to move my amendment.

Item No. 29

Mr. Himmat Singh K. Maheshwari: Sir, I beg to move :

That for item 29 the following be substituted :

"Airways, subject to the right of a federated State to develop air communications within it."

As the House is perhaps aware, the States have the right at present to develop air communications within their areas. I want to know definitely whether the intention is to leave them this freedom or in future to take over the landing grounds and air communications in the States under the control of the Federation.

Mr. N. Gopalaswami Ayyangar: Sir, the item is a general description which provides for legislation being undertaken as regards airways. That by itself does not connote the elimination of Indian States altogether from engaging themselves in enterprises which provide air communication between one point in their States and another. The whole thing is to depend upon what is decided to be put into the federal law when it comes to be made. I have no doubt that such legitimate interests of Indian States, as deserve to be catered for, will be provided for in that law. After all, in regard to the question of airways in general, everybody should agree that the legislation regarding air communications, routes, etc., should be regulated and controlled by the centre. I do not think that what Mr. Himmat Singh

[Mr. N. Gopalaswami Ayyangar]

apprehends will necessarily come to happen. There is no need to make an exception because, even in regard to airways operated by Indian States within their own limits, in respect of certain aspects of control, it would be necessary to vest power in the centre.

Mr. President: The question is:

That for item 29 the following be substituted:

"Airways, subject to the right of a federated State to develop air communications within it."

(The motion was negatived.)

Mr. President: The question is:

"That item 29 be adopted."

The motion was adopted.

Item No. 30

Mr. H. V. Pataskar: Sir, I beg to move:

"That in item 30 for the word "Federal" where it occurs for the second time the word "national" be substituted."

Item 17 of the provincial list refers to provincial highways and waterways, and for that reason it seems to be proper to mention them here as national highways and waterways I hope it will be accepted. Sir, I move.

Mr. Alladi Krishnaswami Ayyar (Madras: General): Sir, I beg to move:

"That in item 30 the words 'and waterways' be deleted, and for the words 'Federal Government' the words 'Federal law' be substituted."

The reason why I move this is that in item 31 you are providing for "shipping and navigation on inland waterways declared by the Federal Government to be Federal waterways". Therefore if you retain waterways here there will be a certain overlap between items 30 and 31. Secondly, if you use the general expression "waterways" it will be susceptible to the construction that the entire control over the waterways including irrigation and other rights may be taken over by the centre, which is certainly not the object of the original item. So in order to show that it must have a restrictive operation it is much better that waterways should be omitted from item 30 and brought under item 31. And later on for the development of waterways special provision is made. The idea is to preserve in their integrity all the other rights of the provinces in regard to waterways. For all these reasons I move this amendment.

I have no objection to Mr. Pataskar's amendment which seeks to substitute "national highways" for "Federal highways". Sir, I move.

Mr. N. Madhava Rao (Eastern States): Sir, my only object in proposing to move an amendment* to this item is to emphasise what must have been in the minds of the authors of this list. High

*No 19.—That in Item 30, after the words "declared by the Federal Government" the words "in consultation with the Government of the Unit or each of the Units concerned" be inserted.

ways and waterways fall generally within the sphere of the Units, and if they are to be declared as federal in any particular case, it is reasonable to assume that the Government of the Unit or the Units concerned would be consulted, and their opinions given due weight. If the Federation makes such a declaration, it will be for improving the highway or waterway in question and maintaining it at a higher standard than the resources of the Units permit. Such being the case, it is most unlikely that any Unit would raise any objection unless the proposal was coupled with very unacceptable conditions. Several of the entries in the Federal List read as if unilateral action by the Federal Government was contemplated, although I am sure the real intention was quite different. It is expedient to remove this impression. I would not have really moved this amendment, Sir. To save time I might have taken it for granted that before a declaration like this was made, the Units concerned would be consulted. But after Mr. Alladi Krishnaswami Ayyar's amendment, I feel a little confused as to what exactly is the object and import of this item. Is it mainly concerned with the construction and improvement of highways and their maintenance in a proper and efficient condition? Or is it meant to empower the Federal Parliament to legislate in regard to the carriage of goods and passengers? Both items 30 and 31, as they stand, are to me fairly clear. It is the amendment proposed by Mr. Alladi Krishnaswami Ayyar, that have aroused some doubt. I should like to have some enlightment as to what exactly is the object of the amendments and how the entry would read with the amendments now proposed and what its effect would be on the powers and responsibilities of the Centre *re* (*a*) the maintenance of highways, and (*b*) control of passengers and goods traffic on such highways.

Mr. Hussain Imam (Bihar : Muslim) : Mr. President, I should like to express certain opinions for the consideration of the House and for the guidance of the draftsman if my suggestions are approved of. I am referring to a particular matter as far as waterways are concerned. We agree that as far as the control of shipping is concerned, it is covered by item 31 and there is no need for its inclusion in item 30. But there is another aspect of waterways with which we are at the present moment concerned, namely, the development of power and irrigation as a consequence thereof. We have this scheme of the Damodar Valley in which two Provinces are interested—Bihar and Western Bengal. Now, because of the present set up, the Central Government could not legislate on that without the concurrence of the two Provinces concerned. Similarly there is the Rihand Valley Project between Mirzapur District of U.P. and Palamau District of Bihar. The development of this project is dependent on the concurrence of the two Provinces concerned. I think that now that we are legislating anew, it is necessary that provision be made to distinguish between the two functions—the irrigational and power development aspects. In the smaller rivers, or rather in the case of rivers in which only one Province is concerned, it could remain as at present a Provincial subject.

[Mr. Hussain Imam]

But where large rivers are concerned, in which two or more provinces are concerned or interested, it is only proper that these should remain a Central or Federal subject so that the present difficulties which we have to encounter of getting the concurrence of the Provinces, asking them to bear some part of the expenses and cost thereof—all these create difficulties—may be avoided. The Provinces are notoriously poor. Their resources are very meagre. Take for instance the Mahanadi Project in Orissa. It is impossible for that Province to finance this project out of their own resources. I therefore suggest that in framing this item, care should be taken to see that there is no encroaching on Provincial rights, as far as rivers, in which only one Province is interested, are concerned. But where more than one Province is interested in a River, and the work is of a major nature involving power development together with irrigation, it should remain a Federal subject. I am making this suggestion for the consideration of the House. I have, therefore, not put in any amendment; but if the House approves of this idea it may be incorporated by the draftsman when preparing the Bill.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, the difficulty anticipated by the previous speaker can be fully overcome by the provision of the Government of India Act enabling the Federal Legislature to pass laws for more than one Unit wherever two or more Units are interested even in a Provincial subject. It does not need any alteration of the present item, and it need not be included in list I, it is not necessary to clothe the Federal Legislature with all the power, irrespective of whether a particular Unit wants the power to be exercised in their favour or not. That is my first point.

Then, as regards the amendment moved by Mr. Madhava Rao, there is some meaning in what he said. If Highways are vested in the Central Government and included in the Federal List, without any qualifications, the regulation of traffic over the highways also will be a Central subject. Highways naturally pass through many Units. There is no highway which does not pass through Units, and so far as roads are concerned, they are a Provincial subject. Therefore, he justly asks if it is the intention of the Centre to exclude these from the operation of the Provincial Legislature, so far as the road traffic is concerned. My view is that it is necessary that it must be exclusively with the Centre. There may be occasions when the traffic on these roads may have to be controlled in the interests of the Federation. But the ordinary kind of traffic may be left to the Provinces. In the Centre we are accustomed to such legislation as the Motor Vehicles Legislation. There is the Motor Vehicles Act passed by the Central Government which also gives power to create Provincial Traffic Boards to deal with the traffic in the Provinces. Likewise though highways are included in List I, provision may be made to reserve certain powers to the Centre as in times of emergency for the regulation of traffic, though the ordinary maintenance of traffic may be entrusted to the Provinces. Therefore, there is no need to accept the amendment

suggested by Mr. Madhava Rao, and the present item may be left as it stands.

Mr. N. Gopalaswami Ayyangar: Sir, for the very good reasons adduced by Mr. Alladi Krishnaswami Ayyar, I accept his suggestion that we drop "waterways" from item 30. If we retain it there, it would lead to a certain amount of overlapping between items 30 and 31, not to speak of other items relating to waterways in the rest of the list. The actual amendment proposed by him was originally "Highways declared to be such by Federal law", and we have an amendment moved by Mr. Pataskar that, for the words "Federal highways and waterways", the words "national highways and waterways" be substituted. I have already said that we are omitting "waterways" from this item, but I think it would meet the points of view of both these Honourable Members if I suggest that the item may read as follows :

"National highways declared to be such by Federal law."

If the House agrees to that small amendment, we may get through with it.

The next amendment that was moved was by Mr. Madhava Rao. I think he himself conceded that no highways are likely to be declared "national highways" without previous consultation with the units. That is a matter of administrative routine and I do not think it is necessary that we should insert the words that he has suggested in item 30. He wanted, however, some clarification as to what exactly was meant by the item at it stands, whether it would include, for instance, power being taken by the Federal Legislature to control traffic on the roads. What I would like him to realise is that the item as it stands primarily refers to the construction and maintenance of national highways. As regards the question of the regulation of traffic thereon, we are not giving any specific power to the Centre. As a matter of fact, in regard to other forms of communication like waterways and railways and, I believe, airways, we have specifically provided in this list for the Centre taking power to control carriage of passengers. We have not made any such provision here. I should therefore suggest to him that the powers that the unit may possess for the control of such traffic even on national highways, it will not be deprived of.

The next point that I wish to refer to is the one mentioned by my Honourable friend Mr. Hussain Imam. He referred to waterways. But, as I have said, we propose to omit waterways from this item. Apart from that, on the merits of what he said, some argument has been advanced on the other side by Mr. Ananthasayanam Ayyangar to the effect that in the constitution there will be provision for two units concerned with the same waterway applying to the Centre for legislation to regulate and control it. Apart from that provision which will certainly be made, I would refer Mr. Hussain Imam to item 83 in the Federal List itself, which refers to the development of

[Mr. N. Gopalaswami Ayyangar]

inter-unit waterways for purposes of flood control, irrigation, navigation and hydro-electric power. That ought to satisfy him to the full.

Shri Ananthasayanam Ayyangar: May I ask one question of Mr. Gopalaswami Ayyangar? He said that "national highways" without any further qualification would only mean construction and maintenance of national highways and he said that item 31 provides for "carriage of passengers and goods on such waterways". These according to him are not restricted by the powers conferred on the Centre. Without that the Centre will not have such power. On the other hand, can it not be taken as restricting the powers of the Centre, and if that is so, is it not necessary to accept in some form Mr. Madhava Rao's amendment?

Mr. N. Gopalaswami Ayyangar: Sir, my answer is this. In the remarks I made I was rather deliberate. I skated over rather thin ice from a legal point of view. "Highways" left as highways only in this item would cover power to make regulations even as regards traffic. I did not say in my remarks that the Centre would not have that power. What I really intended to convey was that we are not giving the Centre *exclusive* power—which is what is meant by inclusion of the item in this list—to regulate the traffic on even national highways. What I told Mr. Madhava Rao was that, even if the item were left to stand as it is, there is no specific taking away of the power in the units to make any regulations they may like. I think there is a certain amount of delicate interpretation of the wording of these items involved in what I said, but I believe the substance is clear from what I have said.

Mr. President: Mr. Gopalaswami Ayyangar has in effect accepted the amendment moved by Mr. Alladi Krishnaswami Ayyar and the one moved by Mr. Pataskar. So I will put both these amendments in the way in which he intended them to be put, namely,

For item 30, the following be substituted :—

"National highways declared to be such by Federal law."

The amendment was adopted.

Mr. President: Now there is Mr. Madhava Rao's amendment.

Mr. Madhava Rao: I withdraw my amendment, Sir.

Mr. President: Mr. Madhava Rao has withdrawn his amendment. I hope the House gives him leave to withdraw his amendment.

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

Mr. President: I shall now put the item, as recast, to vote, namely,

"30. National highways declared to be such by Federal law."

The motion was adopted.

Item No. 31

Mr. President: Item 31. There is an amendment by Mr. Alladi Krishnaswami Ayyar.

Mr. Alladi Krishnaswami Ayyar: Sir, as item 30 has been carried, 31 may be retained with this change. I would suggest the substitution of the words 'Federal law' for the words 'Federal Government' in item 31. The item, as amended, will read thus :—

"Shipping and navigation on inland waterways, declared by the Federal law to be Federal waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways, etc."

This will bring item 31 in line with 30.

Mr. Naziruddin Ahmad: Mr. President, Sir, the amendment which stands in my name is in the alternative form. I do not wish to move the first part. I wish to take up only the alternative part. The alternative part is again divided into two parts. I gave notice of it in two separate portions but they have been printed together. I only wish to move the last portion of the alternative amendment. The portion I beg to move runs thus :—

"That in item 31 for the words 'on such waterways', the words 'in such waterways' be substituted."

I submit, Sir, that this is only a drafting amendment. When speaking of roadways we say 'on' such roadways but when speaking of waterways, I should think that it should be 'in' such waterways. While travelling on the road you move on the road but when passing in the waterways, the vessels go at least partly under the surface. This is the impression which I have got on the subject. As I have submitted it is purely a drafting amendment and I hope the Honourable Mover may consider the advisability of accepting it.

Mr. N. Gopalaswami Ayyangar: Sir, I accept Mr. Alladi's amendment to substitute 'Federal law' for the words the 'Federal Government' in item 31.

As regards the amendment moved by Mr. Naziruddin Ahmad, it is a matter of what would be correct English. After all what this refers to is movement. We move on the road—that seems to be conceded. I do not know if it is right to say we move in the water. I think *on* is not necessarily wrong. I cannot accept the amendment straightaway but I shall ask the draftsman to have the English examined very carefully and decide between *on* and *in*.

Shri R. V. Dhulekar: (United Provinces: General): *[Mr. President, this amendment of Mr. Naziruddin Ahmad is out of order, regarding the use of "on" or "in". Englishmen may be able to decide that and they may do what they like. As this constitution will be drafted in Hindi there is no need of such discussions.]*

Mr. President: *[We shall see to it when there is Hindi.]*

Mr. President: The first amendment is by Mr. Alladi Krishnaswami Ayyar. That has been accepted by Mr. Gopalaswami Ayyangar. I take it that the House accepts it.

The amendment was adopted.

Mr. Naziruddin Ahmad: I withdraw my amendment.

[ ] English translation of Hindustani speech.

Mr. President: I hope the House agrees to the withdrawal of the second amendment by Mr. Naziruddin Ahmad.

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

Mr. President: I put the item to vote.

Item 31, as amended, was adopted.

Item No. 32

Mr. President: We take item 32. There is an amendment by Sir V. T. Krishnamachari.

Sir V. T. Krishnamachari (Jaipur State): I do not move it.

Shri K. Santhanam: Sir, I beg to move—

"That in paragraph (b) of item 32, the word 'broadcasting' be deleted and the following be added at the end :

'Federal broadcasting and law and regulation of broadcasting'."

I was expecting that amendment No. 32 will be moved and if it was moved I was going to support it. The item as it stands gives not only law but also actual owning and regulation for telephones, wireless, broadcasting and other forms of communication whether owned by the Federation or not, to the control of the Centre. So far as law or regulation of these communications are concerned, there is no doubt that it should be a central power but whether the unit should possess these forms of communications as supplementary to the central lines of communication is a point which requires careful consideration; in such a big country as this, with all kinds of difficulties and many languages, it is essential that the line should not be drawn too tightly. I think at least so far as broadcasting is concerned, it is essential that every linguistic unit should be allowed to have its own broadcasting arrangements, subject of course to the regulation of the Centre for law and other matters which require to be regulated. I wish that the other matters also—telephones and other communications also—had been brought in but as that amendment is not moved, I am moving my amendment so that at least the broadcasting is brought in. Sir, I move the amendment.

Mr. A. P. Pattani: (Western India States Group 4): Mr. President, the amendment which I wish to submit reads as follows :—

"That for paragraph (b) of item 32 the following be substituted :

'Telephones, wireless, broadcasting and other like forms of communications owned by the Federation; and regulation of similar forms of communications owned by provinces or States'."

The States, Sir, have agreed to federate—to join the Union on the three subjects of Defence, Communications and Foreign Affairs. If I am correct in my interpretation, they are whole-heartedly prepared to co-operate with the Union in these subjects.

They do not wish to make more reservations than are necessary. Defence and Communications are interdependent subjects. Defence will be possible only if there are proper communications. My amendment, therefore, Sir, does not wish to restrict the powers of the Union. All I wish to suggest is that there should be a distinction

between Federal telephones, wireless, broadcasting, etc. and similar forms of communications owned by Provinces and States. The latter should be regulated only by the Federation. I only want to make a distinction between the two ownerships and nothing more. So I submit the amendment.

Mr. N. Madhava Rao: Mr. President, Sir, these are amendments which I have tabled more with a view to elicit information than to make any positive contribution to the proper drafting of this item. I shall explain my object.

In the first sub-item, Posts and Telegraphs, it has been stated:

"Provided that the rights existing in favour of any individual State Unit at the commencement of this Constitution shall be preserved to the Unit until they are modified or extinguished." etc.

Now, with regard to posts and telegraphs, there are certain rights more or less of a contractual character which subsist in favour of certain States. I am not aware that there are any with regard to telegraphs. With regard to telephones there is an understanding that the States are at liberty to erect and operate systems which are internal to the State. The Indian States are entitled to set up and maintain telephone systems, open them to the public and work them for gain or grant licences to private companies and persons for the same provided the lines do not go beyond the limits of the State into British India or into another State.

Now, I would like to know how this assurance that has been given in the past is likely to be affected by the adoption of this item of the Federal Legislative List.

Then again, Sir, with regard to Savings Bank, this is not really an item under communications at all. Merely because the Savings Bank is operated by the Postal Department this item is mentioned here. This question of Savings Bank was raised before the Davidson Committee. The Government of India, who were consulted by the committee, expressed their opinion as follows:—

"These operations which take the form of savings bank account and the sale of cash certificates represent a form of commercial exchange from which each party concerned derives some benefit which is fairly balanced by the consideration given..... We admit, however, that it would be a new and unjustifiable principal of political practice to hold that the Paramount Power is entitled to carry on these transactions in the States against the wishes of the Rulers and, in some cases, in competition with the Durbar's own local arrangements. We are prepared therefore to arrange for their complete cessation in the territory of any State that definitely asks for it."

Now, some States I know of are thinking of establishing their own savings banks and it is quite likely that for their proper working it would be necessary to ask the Postal Department to withdraw its own savings bank system. Now, whether the assurance conveyed in the passage which I have now read out is still valid or is to be re-

[Mr. N. Madhava Rao]

garded as a matter of ephemeral policy which may be altered at any time is a matter on which I should be very grateful for elucidation.

Thirdly, with regard to wireless and broadcasting, there is a provision in section 129 of the Government of India Act. I wish to know whether anything corresponding to this would be reproduced in the new Constitution. It is for the sake of ascertaining these particulars that I am moving these three amendments, viz.,

"That in paragraph (a) of item 32, after the words 'Posts and Telegraphs' the words 'telephones; post-office Savings Bank;' be inserted."

"That in paragraph (b) of item 32, the word 'telephones' be deleted, and the following be added at the end:

'subject to the provision of the Constitution corresponding to Section 129 of the Government of India Act, 1935'."

"That paragraph (c) of item 32 be deleted.

Mr. Naziruddin Ahmad: I beg to move—That in item 32, the following new para. be added after para. (b):—

"That in item 32, the following new para. be added after para. (b):

'(bb) other like forms of communications'."

This is practically an amendment of a drafting nature because it only seeks to make the enumeration complete. There are in clause (a) the Posts and Telegraphs owned and managed by the Government. In clause (b), Telephones, wireless and broadcasting are mentioned. The sub-paragraph which I wish to add is to include within this list "Other like forms of communications". There may be private postal undertakings by private individuals. The Government of India have the monopoly for carrying on postal communications. So in order to guard against any loophole enabling private persons to undertake a parallel postal service I have suggested that this sub-clause may be added. It is only a suggestion to the Drafting Committee to take note of and to do the needful that I have made in this amendment.

With regard to Mr. Madhava Rao's amendment in the matter of postal savings bank I think that though it is connected historically with the Postal Department, it does not form part of the "communications" to which the States have acceded. I should therefore think that before dealing with the law relating to Postal Savings Banks, some consultation with the States' authorities may be undertaken. That is all I have to submit in this respect.

Mr. Himmat Singh K. Maheshwari: Mr. President, Sir, I beg to move that in para (a) of item 32 the words "or are acquired by the Federation" be deleted and at the end of para (c) of item 32 the words "in a Province" be inserted.

Sir, in connection with other amendments which I had the temerity to move earlier this morning I have been accused of being sensitive and also of being unduly apprehensive. I plead guilty to these accusations and I must say that my apprehensions regarding

the acquisitive tendency of the Centre are not removed by the wording of item 32 or by any sub-item of this item. I have moved amendments only in respect of sub-items (a) and (c), but I am in full agreement with the amendment moved also in respect of clause (b) of item 32.

In this connection, Sir, I would like to draw the attention of the House to item 4, sub-clause (a) of clause C of the Report submitted to this House in April 1947. At that time, Sir, there was no intention on the part of the authors of the Report to acquire the rights of the States in regard to Posts and Telegraphs. This intention to acquire those rights seems therefore to be a later development.

With regard to clause (b), item 4 of clause (c) of the April Report may again be referred to. It was then intended to deal with Union Telephones, Union Broadcasting, Union Wireless and not with telephones, wireless and broadcasting owned or controlled by States. The intention evidently was only to regulate wireless and broadcasting and other such means of communications owned by the States but not to control them. The present item on the other hand seeks to control all telephones, all wireless stations, all broadcasting stations and other like forms of communication whether owned by the Federation or not. To my mind this is clearly an extension of the principle that was in mind when the earlier April Report was drafted.

Then again, Sir, with reference to clause (c) it has been pointed out already by other speakers that the Post Office Savings Bank does not form part of the subject of communications which is one of the three subjects in respect of which the States have acceded or propose to accede to the Federation in future. In practice, Sir, the business conducted by the Post Office does mean a certain amount of profit to the Post Office and it is only legitimate that Indian States which have established banks of their own should be permitted to deal with the savings bank business and that the Post Office should cease to do this work in future in Indian States.

Prof. Shibbanlal Saksena (United Provinces: General): Mr. President, Sir, my amendment is as follows:—

"That for para. (b) of item 32 the following be substituted:

'(b) Telephones, wireless, broadcasting and other like forms of communication. Acquirement when such systems of communication are not owned by the Federation at present.'".

Sir, there are three subjects on which the States have acceded and they are Defence, Communications and Foreign Affairs. In regard to Foreign Affairs, Sir, the list of Federal subjects will show that the entire jurisdiction is with the Federal Government. As for Defence, there, too the entire control is with the Federal Government. In fact there is provision in item 5 allowing the States to keep their armies, though the strength, organisation and control of these will be by the Federation. But I wish that this provision were not there, and no separate armies were allowed to be kept by any unit. Similarly

[Prof. Sibbanlal Saksena]

in regard to Communications, I think that no defence system can work unless the communications are completely owned by the Federation. We had the experience of the last war and we know how the Fifth Columnists used to employ wireless transmitters and other things for purposes of espionage. We can conceive of another war. In that case, until the Federation has full control over the system of communications, it cannot adequately discharge its responsibilities for defence. So, I think, that so far as communications are concerned, the Federation must have complete ownership. Of course, I visualise that our Federation will trust its units and will in normal times delegate its powers to them and grant full autonomy by federal laws, but it must have the power in times of emergency to take away all control and be fully prepared to meet emergencies. For if we have no power of ownership of these means of communication, we cannot own them.

This is only possible by providing in this Federal list complete ownership of all the means of communication by the Federation and the power of acquirement by the Federation of all systems which are not owned by it at present. I therefore think that all members from the States will see that by accepting this amendment they will not in any way be losing their right to have their systems of broadcasting in their own States in their own languages. Only they will be giving the Federation the right in times of war to take complete control of all systems of broadcasting. Therefore, I have suggested that "Acquirement when such systems of communication are not owned by the Federation at present", be added to the present clause after the deletion of the words "whether owned by the Federation or not" at the end of the present clause. Because there are some States which have got their own systems of communication I want the Federation should have the right to acquire them at least during the time of emergency and to that I think nobody should object.

Shri M. Ananthasayanam Ayyangar: Sir, I support Mr. Santhanam's amendment. We are all agreed that the Central Government must have control over broadcasting. Even the amendments that have been suggested by the States Ministers did not try to take away the control in the last resort of the Federal Government. All that I am able to read from their amendments is that they should be permitted to establish their own broadcasting stations and to some extent exercise control over them. I am sure that in the body of the Act a provision similar to the existing provision in section 129 of the Government of India Act will be enacted. There, reference is made to treaties and obligations between the Central or Federal Government and the States or Rulers of States regarding the manner in which the powers should be exercised and also in cases of emergency the Governor-General should have power to take charge of the entire broadcasting system in the whole country, whether the broadcasting station is within the ambit of a State or in a province. A similar provision clothing the Central Government with power to take charge in case of emergency will also, I am sure, be made. This

provision is adequately made in the amendment of Mr. Santhanam who recognises that both the provinces and the States may be allowed to have their own broadcasting stations subject to laws and regulations to be made by the Centre.

Then I find Mr. Maheshwari takes objection to one thing in clause (a) of item 32, that is acquisition of broadcasting stations, and posts and telegraphs within the ambit of a State. It is true that it is not there in Entry No. 7 in List I in the Government of India Act. For the sake of uniformity, Sir, if a State is prepared to sell away the posts and telegraphs communications there, it must be open to the Federation to acquire them. Acquisition means not only voluntary acquisition or agreement between the parties, but compulsory acquisition also. The only thing to which they are taking exception is compulsory acquisition.

So far as the railways are concerned, there has been an attempt to centralise all the railway systems for the benefit of the entire State. I am not talking of the States who are not acceding. Those States who are acceding, originally even under the Cabinet Mission Plan, it was intended, should concede the three subjects Defence, External Affairs and Communications. Communications are practically the arteries of defence and in referring to defence, we think in terms of emergency. Therefore, Communications must be a federal subject and there ought to be no deflection from that. The States ought not to stand on respect or prestige in this matter. They must concede the power to the Central Government to acquire the posts and telegraphs within the ambit of a State whether voluntarily or by agreement or even by compulsion.

I support the amendment moved by my honourable friend Mr. Santhanam and oppose the other amendments.

Mr. S. V. Krishnamoorthy Rao (Mysore State): Sir, I do not think clause 32 excludes the right of a Unit to own broadcasting, wireless, telephones, because it says in clause (b), telephones, wireless, broadcasting and other forms of communication, whether owned by the Federation or not. So, all that this clause does is to empower the Federal legislature to legislate, whether these forms of communication are owned by the Federation or not. Especially, in a country like India, in times of war and emergency, communications are closely allied with defence and so the power to regulate and legislate for these communications should rest with the Centre and the Centre alone.

I also oppose the amendment to exclude the Savings Bank from the Post offices, because these Savings Banks are a normal function of the post offices. No State so far as I know can afford the service that these Post office Savings Banks are doing, especially in the rural areas. Almost every State has got its own Savings Bank in the Treasuries and also the Banks financed or partially run by the State. But these post offices are situated in rural areas in small villages and I do not think any State or province can afford to start savings banks in rural areas. This work can be done and it is being done very usefully by these post offices, even branch post offices and therefore I oppose the

[Mr. S. V. Krishnamoorthy Rao]

amendment to exclude the savings banks from the purview of the post office.

I oppose all the amendments and support the original clause as it is.

Shri Gopikrishna Vijayavargiya (Gwalior State): *[Mr. President, I am of the opinion that "broadcasting" should be included in "Communications." Broadcasting is also one of the means of communicating one's ideas and therefore this should also be a federal subject. The objections raised against it are not sound. The amendment of Mr. Santhanam in this connection is appropriate and broadcasting should be a federal subject. Many States today are pressing the view that this right should remain with them. In this connection, what I have to say is that when we are all jointly making the Federation, it is not proper to say that this right belongs to the States and that the Federal Centre should not interfere with it. I think that this is not in good spirit. We are framing the Federation in cooperation with the Princes and their representatives and therefore whatever few rights are being ceded in a few subjects must be surrendered without reservations. This includes Posts and Telegraphs. We must give them to the Federation.

It is my experience that in the small States where there are only State Post-offices, the States place a number of restrictions on people's liberties. Very often, in cooperation with post-offices, C.I.D., and many similar methods the States suppress the news that is sent out, and people's confidensial letters are detained, intercepted and utilised against them in litigation. Therefore, the post-offices, etc., should be a little more independent, and the States should be given minimum rights over them, so that the service that can be rendered to the people through the Post offices, should be properly done. These (Post-offices) can escape intrigues and mismanagement of States only by recognition as a Federal subject.

Therefore this whole subject should be treated as suggested in the amendment of Mr. Santhanam.]*

Chaudhri Nihal Singh Takshak (Jind State): *[Mr. President, I rise to oppose one half of the amendment of Mr. Maheshwari. As an inhabitant of an Indian state, I have some experience of those States which have their own postal arrangements, particularly the smaller States. The State-subjects have a number of difficulties there. Post offices are considered a source of state-revenue and therefore the States try to have as many post-offices and as few postmen as possible. Whereas, in the provinces (of India) the mail is distributed in a village twice a week, in Indian States it is distributed hardly twice a month, not even once a week. The reason is the shortage of postmen.

One other particular difficulty is that the money-orders that are sent there are "exchanged" and the "exchange" takes place in the post-offices in British India. This takes a lot of time. Many a time

[ ] English translation of Hindustani speech.

it happens that due to shortage of money in State-treasuries, money-orders are delivered after many days and delayed even for months.

The third special difficulty is that in such States as have their own postal arrangements, when the pensions are paid from Indian Provinces, the recipients have to go very long distances. Very often, I have seen how much inconvenience widows have to undergo when they go (to post offices) to receive pensions.

The other thing is that post-office is included in the "item" but the Savings-Banks clause cannot be separated from it. In the States where there are local post-offices, Savings bank facilities are not given. Therefore, the words "or acquired by the Federation" should not be deleted. I would request this Assembly that as soon as the Constitution comes into operation, right from the very beginning, the post-offices must be a Federal-subject, so that the difficulties of State subjects may be removed.]*

Mr. A. P. Pattani: Mr. President, Sir, the last honourable member's remarks about the States who wish to co-operate in every possible way, as I said as a member from the States, are something that I do not understand. What is the intrigue of the States he talks about? We are asking you to take the communications that are necessary for the Union. We are requesting that communications which are owned by the provinces or States should only be regulated by the Centre. Where is the intrigue in this? I do not understand, Sir, and I wish the honourable member will explain.

Shri Gopikrishna Vijayavargiya: The thing is this. The intrigue I was mentioning was not regarding the present affairs. But in some post offices, some letters were intercepted and other things done by the States. That was what I was referring to and not the present state of affairs.

Mr. N. Gopalaswami Ayyangar: Sir, the first amendment that was moved to this particular item was that of Mr. Santhanam. I take it that he moved it because the previous amendment on the list had not been moved. I may say at once that, though that particular amendment was not moved by Sir V. T. Krishnamachari, an amendment in substance more or less the same as that amendment has been moved by Mr. Pattani; and, if the House will permit me, I propose to accept the substance of Mr. Pattani's amendment but in the language of Sir V. T. Krishnamachari's amendment which was not moved. The only verbal change that I would make in Sir V. T. Krishnamachari's draft is that I would substitute "Federal" for "Union". It will read: "Federal telephones, wireless, broadcasting and other like forms of communication; the regulation and control of all other telephones, wireless, broadcasting and other like forms of communication". That, I think, disposes of Mr. Santhanam's amendment. I will not accept it.

Shri K. Santhanam: I withdraw it.

]* English translation of Hindustani speech.

Mr. N. Gopalaswami Ayyangar: Then, Sir, I have to deal with the remarks of Mr. Madhava Rao in regard to certain points connected with the wording of this item. I may mention for his information that there is a State where there were agreements about telegraphs between the Paramount Power and the State. I refer to Kashmir. In addition to the Indian telegraph system which works in Kashmir, that State has also a State telegraph system, and the correlation and co-ordination of these two systems have been provided for by an agreement between the State and the Government of India. He referred also, Sir, to certain assurances and statements of policy made by the Crown Representative in respect of post offices, of telephones, of post office savings banks, and about wireless. Now I do not wish to go into all these statements of policy by the Paramount Power which is defunct today. But I would only say that any assurances of that sort were not supposed to be eternal. It is quite possible, even if the Paramount Power had continued in this country, for these arrangements being revised by agreement between the State and the Paramount Power. That procedure will still be available. The short answer to Mr. Madhava Rao as regards these matters is this. I would refer him to the terms of the Instrument of Accession which has been recently signed by all States which have acceded to the Dominion, and one of the items under Communications in respect of which they have agreed that the Federal Legislature should have power to make laws is worded as follows:—

"Posts and Telegraphs, including telephones, wireless, broadcasting, and other like forms of communication."

There is no limitation at all here. In actual fact this broadly worded item is limited by other arrangements. Now I was referring to agreements as regards these matters. We find in the standard Standstill Agreement which has been entered into between the States and the Government of India the clause that will apply to agreements is worded as follows:

"Until new agreements in this behalf are made all agreements and administrative arrangements as to matters of common concern now existing between the Crown and any Indian State shall, in so far as may be appropriate, continue as between the Dominion of India or as the case may be the part thereof and the State."

So that, whatever assurances or agreements already exist will be continued until new arrangements are made. And such agreements, according to the schedule to that Standstill Agreement, could relate to Posts, Telegraphs and Telephones. There can be no quarrel then as regards the wording of the item in the Federal list in the Union Powers Committee Report. It really puts into the new constitution limitations on the power of the Federal Legislature which you do not find in the Instrument of Accession that you have already signed. And it preserves the rights which exist in favour of any individual State at the commencement of this constitution. Those rights will be preserved until they are modified or extinguished by agreement between the Federation and the unit concerned. That, I hope, supplies the clarification which Mr. Madhava Rao sought.

There is one part of this item, clause (a) of item 32, to which some

exception was taker in an amendment moved by my friend Mr. Himmat Singh. He thought that his apprehensions as regards the Centre were only fortified by the words which you find in this clause "or are acquired by the Federation". Now, I wish to put to the House this one point: Posts and Telegraphs are, according to the distribution of powers between the Centre and the Units, an item which should normally be under the exclusive control of the Federation. We recognize the fact that any arrangement that may exist with the States which accede should be continued until other arrangements are made. Now, take the case of the Federation deciding at some time in the future that, in the interests of the country as a whole it is necessary that the standard of postal administration of a particular State should be pulled up, that there was no hope of the State itself doing it, that therefore it is necessary for the Federation to take over the administration of Posts and Telegraphs in that particular State. I think, Sir, in the larger interests of India the Federation should have the power to acquire any rights that that particular State might have. When we say "or are acquired by the Federation" it means that for any rights in what is essentially a Federal subject—any vested interest—which an individual State may have, due compensation will be paid to that State on acquisition. No body who really appreciates a scheme of federation can object to the lodgment of such a power in the Centre.

Then, Sir, I would refer to the other amendment which was moved by Mr. Himmat Singh. He wants to restrict Post Office Savings Banks to Provinces. Apart from the merits of it, I think, if we do that, it will mean a tremendous unsettlement of the existing state of things. There are hundreds of States and thousands of Post Offices in such States which are now doing this work. Is it suggested that the Federation should not have anything to do with this sort of thing in any Indian State? The only thing we need provide for is that, in case any particular State makes out a case for running Savings Banks of its own, unconnected with the Post Office, then it will be a matter for negotiation between it and the Government of India as to whether the Post Offices in the State might be instructed from the administrative standpoint not to have any more Savings Bank work. That is quite possible and if a State makes out a case, I daresay the future Government of the Dominion will consider it. But to remove Post Office Savings Banks in all Indian States from the purview of the Federation will be an economic upsetting of conditions in Indian States which I for one will not recommend to the House.

Then, Sir, we have Mr. Shibbanlal Saksena's amendment which runs as follows:

"That for para. (*b*) of item 32 the following be substituted:

'(*b*) Telephones, wireless, broadcasting and other like forms of communication. Acquirement when such systems of communication are not owned by the Federation at present'."

I think, Sir, the amended form in which this item will appear as a result of what I have said already will cover the substance of what Mr. Shibbanlal Saksena wants.

[Mr. N. Gopalaswami Ayyangar]

The only other amendment I need refer to is that of Mr. Naziruddin Ahmad. He very rightly points out that the words "other like forms of communication" which now occur in clause (b) will only refer to forms of communication of the same type as telephones, wireless and broadcasting. He wanted that the Centre should have power also to regulate forms of communication such as Post Offices and Telegraphs. The only thing that I need say on this point is this: Posts and Telegraphs, in item (a), are a Federal subject. You will notice that even in the case of any postal or telegraph systems, which under the exceptional arrangements which exist with certain Indian States are continued, the Centre will have the power—the Federal Parliament will have the power—to make laws for their regulation and control.

In areas which are not covered by any such special arrangements the Federal Parliament will have exclusive power to prohibit any other kind of postal communication between individual and individual or groups of individuals and groups of individuals. As a matter of fact, I believe, there is in the existing Post Offices Act a section which makes it an offence to circumvent the regular post by making any arrangement privately for the despatch of letters between one area and another. That is an offence under the Post Offices Act. I am sure that provision will be continued. Nobody can send a telegram except through the Government Telegraph Office at present. In view of this, I do not think he need press the addition of the item he wanted. Sir, I have nothing more to say. The result is that I accept Mr. Pattani's amendment in Sir V. T. Krishnamachari's language, and oppose all the other amendments.

Mr. President: I will now put the amendments to vote, and I think the best course would be to take the item by paragraphs.

There is first the amendment of Mr. Madhava Rao.

"That in paragraph (*a*) of Item 32, after the words 'Posts and Telegraphs' the words 'telephones; post-office Savings Bank;' be inserted,"

(The amendment was negatived.)

Mr. President: Then there is the amendment of Mr. Himmat Singh,

"That in para. (*a*) of item 32, the words 'or are acquired by the Federation' be deleted."

(The amendment was negatived.)

Mr. President: Then I take up the amendments to clause (*b*).

Shri K. Santhanam: In Clause (*a*) I have an amendment about the words "State Unit". These words are likely to cause confusion.

Mr. N. Gopalaswami Ayyangar: Sir, he might leave the refining of the phrase to the draftsmen.

Shri K. Santhanam: The intention is the States?

Mr. N. Gopalaswami Ayyangar: Yes.

Mr. President: To Item No. 32 (*b*) the first amendment is that of Mr. Pattani, in the language of Sir V. T. Krishnamachari.

The amendment was adopted.

Mr. President: Then I take it that Mr. Santhanam withdraws his amendment.

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

Mr. President: I do not think it is necessary to put **Mr. Shibbanlal** Saksena's amendment now separately.

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

Mr. President: Then we take Mr. Madhava Rao's amendment.

Mr. N. Madhava Rao: That is a consequential one and it drops, as also my amendment to 32(*c*).

Mr. President: Then we come to Mr. Himmat Singh's amendment.

"That at the end of para. (c) of Item 32, the words 'in a province' be inserted'."

(The amendment was negatived.)

Mr. President: There is, I think, only one other amendment, that is the one by Mr. Naziruddin Ahmad.

"That in item 32, the following new para. be added after para (b):
'(bb) other like forms of communications'."

Mr. Naziruddin Ahmad: Sir, I withdraw my amendment.

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

Mr. President: Then I put the item, as amended, to the vote of the Assembly.

Item No. 32, as amended, was adopted.

Item No. 33

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

"That in item No. 33, the brackets enclosing the words 'other than minor railways' be deleted."

This is only a drafting amendment. This item corresponds with item No. 20 in List I of the Government of India Act. It is exactly the same, except that the two brackets appear here which do not appear in the model. I submit that the brackets are unnecessary and without them the item would read better. In fact, to me it seems that the brackets are an eyesore and look like hurdles to impede the reader.

Mine is purely a drafting amendment and I suggest it to the House for consideration.

Mr. N. Gopalaswami Ayyangar: Sir, I agree that a bracket is a crude thing in a list of this sort, and I accept the amendment. But, if Mr. Naziruddin does not consider it inappropriate, I would put a comma before and after that expression (*Laughter*).

Mr. Naziruddin Ahmad: Sir, I agree.

Mr. President: There is no other amendment to this item and that moved by Mr. Naziruddin Ahmad has been accepted by Mr. Gopalaswami Ayyangar.

[Mr. President]

I now put his amendment to vote.

The amendment was adopted.

Mr. President: Now I put the item, as amended, to vote.

Item 33, as amended, was adopted.

Item No. 34

Shri K. Santhanam: Sir, I move that in item 34, the following be added at the end:—

"Provision of education and training for the mercantile marine and regulation of such education and training provided by units and other agencies."

The need for the centralisation of the qualifications needed for engineers, pilots and other executive officers of the mercantile marine need not be dilated upon. It is essential that all the standards as well as the actual provision of education should be in the control of the Centre, but there is no reason why there should be any prohibition of the provision of such education by universities and other agencies. Only such education and training should conform to the standard set up by the Centre The actual amendment that I am moving provides both for central provision as well as central regulation of other provision by universities and State agencies.

(Mr. G. L. Mehta and Prof. Shibbanlal Saksena did not move their amendments.)

Mr. N. Gopalaswami Ayyangar: I accept Mr. Santhanam's amendment, Sir.

Mr. President: The amendment moved by Mr. Santhanam has been accepted by Mr. Gopalaswami Ayyangar, that in item 34 the following be added at the end:—

"Provision of education and training for the mercantile marine and regulation of such education and training provided by units and other agencies."

I now put the amendment to vote.

The amendment was adopted.

Mr. President: The question is that item 34, as amended, be adopted.

Item 34, as amended, was adopted.

Item No. 35

Mr. President: There is no amendment to item 35. I put it to vote.

The item was adopted.

Item No. 36

Mr. H. V. Pataskar: Sir, I beg to move that in item 36 the following be added at the end:—

"and the constitution and powers of Port Authorities therein."

Mr. R. K. Sidhwa (C. P. & Berar :General) : Sir, until the Government of India Act, 1935, came into existence, all the major ports in India were controlled by the Provincial Governments, but before

that period a wider franchise was given to the governing bodies of the various port trusts and therefore the non-official majorities were considerably increased. But the Government of India which was bureaucratic and was controlling those port trusts subsequently took away those powers from the Provincial Governments. I would have preferred not to burden the Central Government again with these major ports to be controlled by them. However, if it is felt that in the existing circumstances there should be a uniform law for all the major ports I do not press my amendment to delete the item in this list and insert it in List No. II.

Mr. A. P. Pattani: Mr. President, the only suggestion I have to make in this connection is that at the end the following proviso be added to this item :—

"provided that for ports of federated maritime States such declaration or delimitation shall be made after consultation with the State concerned."

I have only made this suggestion because in the past there has been a tendency on the part of the Central Government to take rather drastic action without consulting the States, and since we are coming into the Federation we should be consulted before suddenly delimitations of our ports are taken in hand. Of course, the same applies for declaration of a minor or a major port. Sir, I move.

Mr. Naziruddin Ahmad: Sir, I beg to move that for item 36, the following be substituted :—

"36. Major ports, that is to say, the declaration and delimitation of such ports and the constitution and powers of port authorities therein."

Sir, the amendment is exactly a reproduction of item 22 in List I to the Government of India Act, from which the present item 36 has been taken. It is in substance the same; there is difference in the drafting. The amendment gives complete power to deal with the subject, *i.e.*, to declare a port to be a major port. While the amendment emphasises the power to be given to the Federation the item under consideration emphasises the fact of declaration or the action taken under the item. I submit the amendment would serve the purpose better. However, it is only a drafting amendment and it is submitted for the consideration of the Drafting Committee.

Shri Lakshminarayan Sahu (Orissa : General) : Mr. President, Sir, I approve wholeheartedly of this item, but at the same time, I wish to add that there should be some provision for opening at least a new major port in every coastal province.

My amendment is :

"That the following be inserted at the end of item 36 :
'and also opening of at least a new major port in every coastal province'."

My anxiety for my own province actuates me to suggest this amendment. The present province of Orissa is in a very wretched condition. Once it was very prosperous and the present poor condition of Orissa is due to want of a major port and that is why I want that there should be an insertion of such a clause so that we, the coastal provinces, may have at least one major port. Mr. Sidhwa on the other hand wants that it should not be a subject under the

[Shri Lakshminarayan Sahu]

Federal List; but I must oppose that and say that unless it is under the Centre, it is not possible for the Province to develop a new port. My friend Mr. Naziruddin Ahmad has partly supported me by his amendment and I therefore hope that my amendment also will be passed. The once prosperous province of Orissa has been reduced to such penury that it is a shame for the whole Union; it will remain a shame for the whole Union unless and until it is developed and brought into line with other provinces. When you are going to start, so to say, anew altogether, all the provinces must be started on an even keel and that is why I am so particular that we must have a major port, so that trade and industry may flourish. We must have a channel through which we may be able to be prosperous. Once the policy of starting canals in Orissa was started; but it was a failure and that caused great inconvenience and cost to the people of Orissa. Again, the Railways were started and the Railways have also become so to say a failure in Orissa to a great extent because there are not many openings and we get floods almost once in three years and we suffer terribly. The real prosperity of the coastal province lies in its ports and in former times Orissa was very prosperous only on account of her ports. In almost every district we had one or two ports; in Balasore we had the port of Pipli and Chandbali, and in Puri in olden times we had the famous port of Chelitola. All these ports are practically non-existent today and I therefore wish that our new Union will give us such help that we may be able to start at least one major port for the province of Orissa. To start with, the Andhra province—it is expected it will be a new province—will have Vizagapatam; but though our province has been created in 1936 and it is a coastal province, we have no major port. I therefore wish that this should be included in item 36. As regards the language, I feel some difficulty in wording it properly but I hope that may be changed properly by those who are in charge of the drafting.

Mr. G. L. Mehta: (Western India States Group): Mr. President, I am intervening in this debate to make clear a few points. So far as ports are concerned in this country they are not merely intimately connected with Communications which is a Central subject and must therefore be under Central control but they have also enormous strategic importance. Last year the Government of India appointed a Ports Development Committee which presented a valuable report and the Honourable Members of this House, if they study the report, will see that this Committee has realized and emphasised the vital importance of ports on the coast of India for strategic, defensive as well as commercial purposes. Ports Sir, are also connected with Railways in the hinterland and Railways are a Central subject and therefore I would suggest that ports should be under Central control. Mr. Pataskar has given notice of an amendment that the constitution and powers of Port Authorities therein should also be included in the Federal List. I think that is a reasonable amendment because if the delimitation of ports is included, naturally the constitution and powers of the port authorities should also be included in this list. Mr. Pattani has given an amendment that "Provided that for ports of federated maritime States such declaration shall be made after consultation with the State concerned." I am sure, Sir, that will be

exactly what will be done and I do not know if this provision should find a place in the Federal Legislative List. Mr. Gopalaswamy Ayyangar will no doubt be able to enlighten the House in this matter. I would submit that the inclusion of this item in the Federal Legislative List is justified and if we had made a mistake before 1932, there is no reason why we should continue that mistake.

As regards the suggestion that there should be one major port in every province, that surely is a matter for detailed technical investigation and a question of the financial resources of the Province and of the country as a whole and is a subject of subsequent legislation, not a matter that should be put in the constitution itself or in the Federal Legislative list. If ports unduly compete with one another and if you want to stop that, it requires co-ordination and Central control. I therefore support the inclusion of this item in the Federal list as moved by Mr. N. Gopalaswamy Ayyangar.

Shri M. Ananthasayanam Ayyangar: Sir, I agree with Mr. Lakshmi Narayan Sahu that power has to be given to the Centre to create and develop ports. As regards competition between ports, it is a central subject and therefore it is up to the Federal Legislature to pass regulations to avoid competition between one port and another. As Mr. Sahu said attempts to improve Railways etc. have failed so far as Orissa is concerned and therefore the only other source that can possibly be had is by creating a major port where there is none. There is provision for development in the 1935 Act as also in the list that we are now considering. If there is already a major port, it is open to improve it; if there is a minor port it is open to the Federal Legislature to declare it to be a major port but it does not give to the Federal Government power to start a major port at a new place. I think provision must be made to create a major port where there is none. No development is mentioned there. Declaration and delimitation are the words used. That means the declaration and delimitation of major ports only. This no doubt gives ample power to the Centre to declare as major port any port developed by a Province. The Centre should help the provinces with finances to develop the ports. Therefore I would urge upon Mr. N. Gopalaswami Ayyangar to accept the words "creation and development" along with the words 'declaration and delimitation'.

Shri T. T. Krishnamachari (Madras: General): Only one thing I would like to say in this connection and it is this: My friend Mr. Ananthasayanam Ayyangar said that the Provinces develop the ports and the Centre takes them over thereafter. That was not the case in my own province. My province has a special fund for minor ports in which over 60 lakhs had accumulated and a sum of Rs. 40 lakhs from this Minor Ports Fund was appropriated by the Provincial Government and put into the general revenues. It is not always the case therefore that the Provinces do the right thing in regard to ports under their control and the Centre the wrong thing.

Mr. N. Gopalaswami Ayyangar: I accept Mr. Pataskar's amendment to insert at the end of item 36, the words "and the constitution and powers of port authorities therein". That is an obvious addition

[Mr. N. Gopalaswami Ayyangar]

to make and that is in substance what Mr. Naziruddin Ahmed intended by his amendment. Mr. Naziruddin Ahmed has really copied out the item as it stands in the List under the Government of India Act. We have slightly elaborated that item, so far as the first part of it is concerned, in our description. Instead of 'Major ports', we have said, 'Ports declared to be major ports by or under Federal law or the existing Indian law including their delimitation'. Now, I do not think that there is any thing very strongly in favour of the Government of India Act so far as this item is concerned.

The other point that has been raised during the debate is that in certain provinces major ports do not exist or minor ports have not been sufficiently developed so as to enable their declaration as major ports. Now, Sir, so far as these are concerned, we have laws already and we shall have power to make laws in the future. In our Federal legislation we shall have to indicate the conditions which should be satisfied before the Federal Government can declare a port to be a major port under that law. It would be wrong, I think, to put into the Constitution any provision that there should be at least one major port in every coastal Province. May be that the coast of a particular province does not admit of the creation or development of a major port. There is no point in going and wasting money on a coast which does not permit of this sort of thing. I am sure that no province which has got the necessary conditions and facilities for having a major port will be denied the opportunity of developing a major port in the new order of things. It is sufficient, Sir, that we take power to create and develop such ports wherever they are necessary and wherever they can be created and developed.

One point I should refer to in the amendment proposed by Mr. Pattani. That provides for consultation with an acceding maritime State before any area in it is declared to be a major port. That consultation, as I have said in connection with the other items, will be a matter of routine in the future. I can understand Mr. Pattani's point that in the past certain things have been done which did not quite meet the legitimate wishes of particular Indian States which come under this description. I can well understand it. In the past, Indian States stood aloof constitutionally from the Centre. The question of major ports was one for the Government of India. Those States were not in direct touch with the Government of India and had to negotiate through the Crown Representative's Department. That was not always a healthy method of getting these questions settled to the satisfaction of both the Centre and of the State concerned. In the future, the States that have acceded to the Federation will become part of the Federation and, just as in the case of provinces, previous consultation will take place before any area is declared to be a major port, the same consultation will take place with the Units which are Indian States. There is also the fact that these Indian States will have representatives at the centre; I am sure there will be representatives in the Legislature and I am sure in the Government there will be some persons who will be there because of their connection with and experience of Indian States. Therefore, Sir, what perhaps had happened in the past, Mr. Pattani may take

for granted, will not necessarily happen in the future. If it does, he has the means of pulling up the Federal Government in matters of this kind and seeing that that sort of thing is prevented.

Mr. A. P. Pattani: May I just say a word? Very often the interests of the different maritime States do not coincide under the present arrangements. Maritime States have their own particular interests and they should be able to place before the Government their case. It will not be possible for all to be represented by some one person or representative.

Mr. N. Gopalaswami Ayyangar: My answer to that is, I think, that practically every maritime state of any importance will have individual representation in the future Federal Legislature. With regard to States which do not have such representation, they certainly do have representation in the sense that, along with other States, they will have the right to send representatives to the Federal Legislature so that there can be no question of any acceding State not being represented in the Federal Legislature at all.

I am sorry I omitted to refer to Mr. Ananthasayanam Ayyangar's suggestion. I think really that the Act as it stands covers the points that he has stated. It is certainly open to the Federation to declare ports to be major ports. It does not necessarily mean that you are given power only to declare a minor port to be a major port. You can take any area in the country and say that it is a major port and provide for the creation of the necessary agencies for its development and so on. I think this is wide enough to cover his point.

Mr. President: I will now put the amendments to vote. There is an amendment by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: I withdraw my amendment.

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

Mr. President: I then put the amendment of Mr. Pataskar, which has been accepted by Mr. Gopalaswami Ayyangar, to vote:

"That the following be added at the end of item 36 :—

"and the constitution and powers of Port Authorities therein."

The amendment was adopted.

Mr. President: The next amendment is by Mr. Pattani: That at the end of item 36, the following proviso be added :—

'Provided that for ports of federated maritime States such declaration or delimitation shall be made after consultation with the State concerned'."

Mr. A. P. Pattani: I withdraw my amendment.

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

Mr. President: Then there is an amendment by Mr. Lakshminarayan Sahu that the following be inserted at the end of item 36 :—

"and also opening of at least a new major port in every coastal Province."

The amendment was negatived.

Mr. President: The original item as amended by Mr. Pataskar's amendment is now put to vote.

Item 36, as amended, was adopted.

Item No. 37

Mr. President: Now we go to item 37.

(Shri K. Santhanam did not move his amendment).

Mr. G. L. Mehta: Mr. President, I beg to move that the following be added at the end of item 37:—

"Provision for aeronautical education and training and regulation of such education and training provided by Units, and other agencies."

Sir, I need not take up the time of the House in commending this amendment to their acceptance. For reasons which were explained by Mr. Santhanam in regard to education and training in mercantile marine services, we need also Central control and co-ordination in education in aeronautical services. I should only like to add one point and that is that for such services as mercantile marine and aviation, we have to pool our resources and in the initial stages, it would be too optimistic to expect that every unit or every state could start similar institutions. We have dearth of technical talent and then we have also the difficulty of getting the necessary aircraft, equipment and so on and therefore, in the initial stages it will be necessary that there will have to be one Central institution. But there is no need to prevent the units from starting such institutions if they so desire, provided we evolve and maintain uniform standards of education and training and competence in such matters. Sir, I move this amendment.

(Mr. G. L. Mehta did not move his other amendment No. 16 in List II.).

(Prof. Shibbanlal Saksena did not move his amendment.)

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

"That in item 37 for the colon, a semi-colon be substituted, and for the comma, a semi-colon be substituted *(laughter)*."

I find, Sir, I have created some amount of amusement in the House by this amendment, but it has a serious aspect. In fact item 37 consists of three different subjects. The first is Aircraft and air navigation. The second is the provision of aerodromes and the third is regulation and organisation of air traffic and of aerodromes. I beg to submit that these three distinct items must each be separated by a semi-colon. That has been the custom in drafting these items. In fact these three different sub-items should be separated by equal kinds of stops, but the separating punctuation between the first and the second is a colon. The reader here is suddenly halted. It acts almost like a full-stop. But between the second and the third sub-items there is a comma. The reader is suddenly hurried from one subject to the other. I have carefully compared this item with Item No. 24 in List I in the Government of India Act to which item 37 corresponds. There the punctuation is exactly as I have suggested. I do not think that an intentional or conscious departure has been made here but this slight difference between the punctuation in the Government of India Act and this item probably is due to a clerical error. I submit this amendment, which is purely of a drafting nature for the consideration of Mr. Gopalaswami Ayyangar.

Mr. President: Mr. Santhanam, there is another amendment in your name.

Shri K. Santhanam: I do not propose to move it, Sir.

Mr. President: We have then two amendments now. Does anyone wish to say anything about them?

Shri M. Ananthasayanam Ayyangar: Sir, as regards training, the amendment moved by Mr. Mehta—I have no objection to it—only elaborates the powers already conferred. As you know all that you do is to insist upon the pilots or drivers having particular qualifications and the schools will come of their own accord. Therefore even in respect of aeronautical training or navigation schools, none of them need be opened. By a stroke of legislation that a particular qualification should be possessed by seamen or navigators or air-pilots, the situation can be solved. Therefore this particular amendment may not be necessary. All the same, there is no harm in its inclusion and I support that amendment.

There is a fundamental thing to which I would like to draw the attention of the House at this stage. So far as the road high ways are concerned, there are national highways and provincial highways. So far as the railways are concerned, there are State railways, all India Railways and there are minor railways. Likewise, in waterways, there are inland waterways and waterways which are declared federal waterways. So far as the airways are concerned, I would like to say, Sir, that there may be a tendency on the part of the Centre to starve the provinces. So far as the airways are concerned, the highways may be reserved for the Centre. Branch lines or branch airways should be left to the provinces to develop as they are better capable of developing this traffic than the Centre. I am not opposing or even moving a formal amendment. But I would like this Assembly to take note at this stage, that the federal legislature, when an Act is passed, ought to provide, as in the case of road traffic boards, for provincial Air traffic Boards, so that air traffic in the provinces may be regulated, expanded, and new lines may be opened so as to feed the main lines or highways, or between one province and another.

There is this danger also. I find, though I am not opposed to centralised capital flowing in all channels and I welcome it, this will help to concentrate the wealth of the country in the hands of a few persons. It may be possible for the Centre to prefer those men with a fleet of aircraft to proceed even to the villages to the detriment of a few persons who may wish to start small air navigation companies in the provinces and gather a few rupees there, so that the province as well may become wealthy. To avoid competition also, there must be an air traffic board—a provincial board established in the provinces.

These are the limitations that ought to be taken into consideration at the time when we pass a federal law to safeguard the interests of all. In view of this and under the impression that it will be

acceptable to the general Assembly I am not proposing any amendment. I support the entry as it stands.

Mr. N. Gopalaswami Ayyangar: Sir, I accept the addition proposed by Mr. Mehta at the end of this particular item which says, "provision of aeronautical education and training and regulation of such education and training by Units and other agencies."

The other amendment was an amendment relating to the punctuation of this item. I entirely agree with Mr. Naziruddin Ahmad that the colon after "navigation" was a mistake for a semicolon and I accept that amendment. I agree with him also, Sir, that after "aerodromes", there should be a semicolon instead of a comma.

Pursuing the same kind of mental process that should have instigated him to propose this amendment, I would suggest, if he approves, that the word "the" before "provision" be omitted. Or if he is not agreeable to that, after the second semicolon, we should insert another "the". I personally would prefer the dropping of "the" before "provision", so that the item will read as follows:

"Aircraft and air navigation; provision of aerodromes; regulation and organisation on air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by units and other agencies."

Mr. President: I now put the amendments to vote. The first amendment is by Mr. Mehta. I take it that it has been accepted by Mr. Gopalaswami Ayyangar. I put that amendment to vote now:

That after item 37, the following new item be added.

"Training in various branches of aviation, civil and military."

Those who are in favour of this addition will please say Aye.

Many Honourable Members: Aye.

Mr. N. Gopalaswami Ayyangar: He has withdrawn that amendment.

Mr. President: I am sorry it is a mistake. I am sorry the vote has to be withdrawn. It was by a mistake that I put it to vote.

Now, I put this amendment to vote:

That at the end of item 37 the following be added.

"Provision for aeronautical education and training and regulation of such education and training provided by Units and other agencies."

The amendment was adopted.

Shri M. Ananthasayanam Ayyangar: Sir, You are declaring according to the sense of the House, when we do not hear the ayes. At least the mover of an amendment must say Aye. Otherwise why should we accept it? It is as much the business of the mover as that of the House.

Mr. President: I take it that the mover has said Aye.

Now the amended item with the semicolons is put to vote.

An Honourable Member: May the House know how it reads now?

Mr. President: "Aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by Units and other agencies."

The item, as amended, was adopted.

Mr. President: It is one O'clock now. The House will now adjourn till ten O'clock tomorrow.

The Assembly then adjourned till ten of the clock on Wednesday, 27th August 1947.

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1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA.

Wednesday, the 27th August 1947.

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

REPORT ON MINORITY RIGHTS

Mr. President: I propose that the House should now take up the Report of the Advisory Committee on Minorities.

With regard to the procedure that I propose to follow, it is this: A motion will be made for consideration of the Report and in that connection I find there are certain resolutions in the form of amendments that the consideration of the Report be postponed either until the next Session or until the consideration of the other Report, that is, the items which they have been considering, has been completed. I shall take those amendments along with the general discussion of the motion for consideration of the Report. When that has been disposed of I propose to go to the Appendix and take the items one by one with the relative amendments to those items, because that will then dispose of many of the amendments which are relevant to the general body of the Report which only summarises the recommendations contained in the Appendix. I think that will be the proper course and the most convenient way of dealing with the matter.

Mr. H. V. Kamath (C. P. and Berar: General): The loud speaker must be out of order because we have not heard a word over here.

Mr. President: In that case I shall have to repeat. What I have said is that the most convenient way of dealing with today's agenda is this: I propose to take up the consideration of the Report of the Advisory Committee on Minorities. A motion will be made for taking it into consideration. In that connection there are certain other motions of which I have notice that the consideration of the Report be postponed until the next Session or until we have disposed of the items on the List which we were considering yesterday. After this, I propose to go on the Appendix of the Report and take up each item. The relevant amendments to those items will be moved and disposed of, and when we have discussed the Appendix we may come to the general body of the Report which is nothing but a summary of what is contained in the Appendix.

I will now request Sardar Vallabhbhai Patel to move the consideration of the Report.

B. Pocker Sahib Bahadur (Madras: Muslim): The procedure prescribed by you is that all the matters in the Appendix may be taken up item by item. But I would submit that even as regards the amendments in each of the items in the Appendix, there are very many subjects each of which is of a different character. Therefore I would request you to dispose of the amendments of one and the same character on each item separately so that all the amendments of the same character on the same item could be taken up together and disposed of. Otherwise, if all are jumbled together, it would lead to difficulties.

Mr. President: That is what I have been thinking of doing—to take each item in the Appendix and all the relevant amendments thereto.

B. Pocker Sahib Bahadur: In disposing of the amendments, the character of the amendments might be taken into consideration, and each of the amendments of a particular character on each item might be disposed of before other amendments of another character on the same item are disposed of.

Mr. President: I do not understand what the Honourable Member means by the character of the amendments. All relevant amendments will be taken into consideration in connection with each item.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General):

Sir, on behalf of the Advisory Committee I beg leave to place this Report* on Minority Rights before the House. It has been drafted after considering the report of the Minority Committee and after considering all the points raised with regard to the safeguards for different minorities in this country. You all know that the question of safeguards for minorities has been discussed several times and considered in various committees, and there is no new point to be discussed. In one committee or other for several years past this question has been discussed, sometimes very minutely, sometimes generally. Sometimes its discussion has taken an acute form and sometimes it has resulted in a bitter controversy. But I am happy to say that this report has been the result of a general concensus of opinion between the minorities themselves and the majority. Therefore, although it is not possible to satisfy all, you will see that this report has been the result of agreement on many points; and wherever there has been disagreement the recommendations have been carried by a very large majority, so that except perhaps on one point the report is practically an agreed report. It may be that there are some who are not satisfied on some points, but we have to take into consideration all points of view and feelings and sentiments of the minorities, big and small. We have tried as far as possible to meet the wishes of all the minorities. The minorities among themselves are also divided; there are conflicting interests among them. We have not tried to take advantage of these differences among the minorities themselves; we have tried to see that the minorities also instead of being divided among themselves try to present a united front in order to safeguard their interests. But there are certain points on which the minorities cannot be united because there are minorities within minorities. So it is a difficult proposition. We have tried to solve this difficult problem without any bitterness and without any controversy which would create any ill-feeling or hitch; and I hope that this House also will be able to dispose of this question in a friendly spirit and in an atmosphere of good will. Let us hope that we will leave the legacy of bitterness behind and forget the past and begin with a clean slate. There is much that is happening round us which requires us to dispose of our business as quickly as possible; and we should do nothing in this House which will add to our difficulties or to the difficulties of our

*See Appendix

neighbours who are at present involved in bitter strife and when our hearts are bleeding with the wounds that are being inflicted on one of our best provinces in India. Therefore I trust that in this House in considering this question which affects all the minorities we will introduce no heat or argument which may lead to such controversy as would have a repercussion outside. I hope that we shall be able to dispose of this matter quickly and in a friendly spirit.

You will remember that we passed the Fundamental Rights Committee's Report which was sent by the Advisory Committee; the major part of those rights has been disposed of and accepted by this House. They cover a very wide range of the rights of minorities which give them ample protection; and yet there are certain political safeguards which have got to be specifically considered. An attempt has been made in this report to enumerate those safeguards which are matters of common knowledge, such as representation in legislatures, that is, joint *versus* separate electorates. This is the question which has raised controversy for almost a decade and we have suffered and paid heavily for it. But fortunately we have been able to deal with this question in such a manner that there has been unanimity on the point that there should be no more separate electorates and we should have joint electorates hereafter. So that is a great gain.

Then again on the question of weightage we have agreed that there should be no weightage and with joint electorates the communities should be representated according to the proportion of their population. Then we have thought fit to agree to reservation in proportion to the population of the minorities. Some of the minorities gladly surrendered that right and said that they wanted neither weightage nor separate electorates but in the general upheaval that is taking place they want to merge themselves in the nation and stand on their own legs. I congratulate those who have taken that stand but I also sympathise with those who still want some help to come up to the standard which we all expect of the nation. We have now also decided that in the public services a certain amount of reservation for certain communities is necessary—particularly the Anglo-Indian community and the scheduled castes in certain respects deserve special consideration. We have made recommendations in this respect. I am glad to say that in this matter also there is unanimity between us and the communities whose interests are affected.

Then we have also provided for some sort of administrative machinery to see that whatever safeguards are provided are given effect to, so that it may not be felt by the communities concerned that these are paper safeguards. There should be continuous vigilance and watch kept over the safeguards that have been provided in the working of the Government machinery in different provinces, and it shall be the business of the officer or administrative machinery concerned to bring to the notice of the legislatures or the Governments the defects or drawbacks in the protection of the rights of minority communities.

We have divided the minorities according to their strength or according to their population. In the Schedule the three parts are set out and dealt with separately because they require separate consideration in proportion to their strength.

[The Honourable Sardar Vallabhbhai J. Patel]

The Anglo-Indians have special rights or rather special privileges or special concessions which they have been enjoying in certain types of services, such as the railways and some one or two other services. Now, suddenly to withdraw these concessions and to ask them to abandon these claims or these concessions and to stand with the general standard would put them perhaps in a difficult position. They may not be prepared for that at present and it is better that we give them time for adjustment. They now know that they have to prepare themselves for this. They have ample notice and I am glad to say that they have agreed that they take this notice. The gradual reduction of these concessions has been agreed to by them. Similar concessions have been given to them in the matter of education. In certain educational institutions they get special grants. These educational institutions are open also to students of other communities, but they are generally meant for the Anglo-Indian community and they get certain concessions in the matter of financial assistance. It is proposed to continue this assistance for some time and by a process of gradual reduction to prepare them for a stage when they can be prepared to come to the general level of the other communities and to share the financial burdens, obligations and difficulties. So there also we have solved this problem by agreement.

Then about representation in the Legislatures. In their case it is difficult. It is a small community of a lakh of people or more, but very substantially small, spread all over India and not located in a particular Province. It is difficult for them to get seats in a general election. Therefore, if they fail in getting representation by the normal process of election in some Provinces or in the Centre, provision has been made for their being nominated, if they are not properly or adequately represented, and that power of nomination is given to the Governor or the Governor-General as the case may be.

Then in other cases, that of the Parsis, they have themselves voluntarily abandoned any concessions that may be given to them and wisely they have done so. Besides, it is well-known that though small, it is a very powerful community and perhaps very wise. They know that any concessions that they may get would perhaps do more harm to them than any good, because they can make their way anywhere, and make their way in such a manner that they would get more than they would get by any reservation or by any separate process of elections. Either in the legislature or in the services, they stand so high in the general standard of the nation that they have disclaimed any concessions and I congratulate them on their decision.

Then comes the Christian community. This community is more populous in two or three Provinces; and in other Provinces they are not so located as to have any direct representation by the process of election. Still they have agreed to have reservation according to their population and to abandon the claim for separate electorate; there is no other safeguard that they have claimed.

We have, so far as the Cabinet representation is concerned also adopted the formula that exists today in the 1935 Act which is considered constitutionally proper and, therefore, it has also been accepted unanimously.

Then comes representation in the services. The general standard that we have accepted is that ordinarily competitive posts must go by merit and if we are to depart from this, the general administration would suffer immensely. It is well-known that since this departure has been introduced in the matter of services our administration has suffered considerably. Now that we begin afresh, we must see that where we have to fill some administrative posts of a higher level, these posts have to be filled by competition, i. e., by competitive examination and competitive tests. We have made some concessions in the matter of certain communities which require a little help.

On the whole, this report is the result of careful sifting of facts on both sides.

One thing I wish to point out. Apart from representation in the Legislature and the reservation of seats according to population, a provision has been made allowing the minorities to contest any general seat also. There was much controversy about it, both in the Advisory Committee and in the Minorities Committee; but it has been passed by a majority. There was also another point which was a matter of controversy, and that was on behalf of the Muslim League and a section of the Scheduled Castes. The point was raised that a certain percentage of votes should be considered necessary for a successful candidate. This was a matter of controversy and amongst the Scheduled Castes themselves a very large majority sent me a representation yesterday saying they were against this. But in the Advisory Committee it was discussed and it was thrown out by a large majority.

Now, this is in substance the Report. But it is possible that when we take the Schedule item by item, it may be necessary to modify the Report as and when the items are considered and passed. Therefore, as the President has urged, we may take the Schedule item by item and the Report may be modified accordingly as and when the items are passed.

Mr. President: There are two motions, of which I have notice, which are for adjourning the discussion of this Resolution. I would ask those Honourable Members to move their motions.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Not moving.

Mr. Naziruddin Ahmad (East Bengal: Muslim): Also not moving.

Mr. President: Then the general motion that the report be taken into consideration is open for discussion.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, Sir, the worthy and able Chairman of the Advisory Committee on Minorities and the Members of this Committee deserve our sincere thanks for the highly satisfactory report that they have produced on the question of the rights and representation of the minorities in India. In my opinion, there is no more monstrous word in the history of Indian politics than the word "minority". Even since India emerged out of its political infancy, the demon of the interests of minorities and their protection stood before us and appeared to bar the progress of the country. It is a matter of history that this was a creation of the British policy, but it succeded so well that it is, in my view, essentially

[Dr. P. S. Deshmukh]

the work of the Satan of minority that our beloved country united for over a century has been divided into more parts than one. That this monster should at long last have been shorn of its terrors is an achievement worthy of note. I believe, Sir, that the Members of the Advisory Committee have in this respect a great achievement to their credit. I therefore offer them my hearty congratulations.

First and foremost, they have discontinued separate electorates. Secondly, the none too just system of weightages has been given up. The composition of Cabinets is not going to be hampered by insurmountable difficulties of taking minority representatives as of legal and constitutional right nor are our percentages of recruitment going to be worked up to the second decimal as would certainly have been the case had the various representatives of the minorities insisted upon reservation in those spheres also. I believe I voice the feeling of a large section of this House when I say that the representatives of these minorities have taken a long and nationalistic view of the whole matter and provided they do not do anything to spoil the good effect, I would like to assure them on behalf of us all that they will never have any occasion to repent what they have conceded. It should always be remembered that we are, speaking the bare truth, a highly charitable and liberal-minded people. Some of our Muslim friends, mostly as a result of the British policy, painted us as tyrants and majority-mad oppressors. I have never found any justification for such an accusation, but an unjust and untrue charge was repeated *ad nauseum* and somehow sustained throughout the last so many years. It is upon those false foundations that Pakistan was demanded and conceded. Very few showed patience to analyse the facts. Rather than tyrannize the minorities, the fact was that in most places the minorities tyrannized the majority. The Muslims have almost everywhere enjoyed privileges far in excess of what may be called just or fair. In my own curious Province, Muslims still enjoy a position which is even today denied to over 60 per cent of the peasants and workers by our own Hindu rulers.

This is not an occasion on which I would like to go further into the matter than this. I am content that no minority is going to try any more to deprive others of what legitimately belongs to them. For many years past, it was the majority that has been tyrannized. Unfortunately, the so-called majority is dumb and deaf and although many of us try always to speak in their name, I have no hesitation in stating that we have completely failed in translating our words into action. May I ask, Sir, what place has been given to the millions of Jats, millions of Ahirs, Gujars, Kurmis, Kunbis, the Adibasis and millions of others? Have we not been a little too engrossed in our own exploits and have given inadequate thought to the thousands of these poor people who have sacrificed their lives to give us the present freedom? What place have we assigned to them except to visualize that they will as heretofore blindly, meekly and religously vote for any one we will choose for them? From this point of view, the situation is gloomly even today. It is up to our present rulers to examine and consider, if they are so inclined and to understand all that I mean. If they do not do this, nothing but trouble and destruction will lie ahead. I therefore urge that at least when the minorities are content to have

only their fair share of power in the Cabinets and a reasonable proportion in Government services, our rulers will pay some attention to the oppressed and neglected rural population which has even under the sacred name of the Congress been more undone than assisted. Pressed by political considerations, microscopic minority interests have been advocated by the greatest of democrats. They enjoyed posts and privileges which they had no right to enjoy. It is self-evident that if anybody enjoys more than he deserves, he must of necessity deprive someone else of his legitimate share. Let this be borne in mind in distributing power and posts among the various Hindu communities and let the policy of the Devil take the hindmost cease, at least from now.

Shri V. I. Muniswami Pillai (Madras: General): Mr. President, Sir, I feel today is a red letter day for the welfare of the minority communities that inhabit this great land. Before I proceed, I have to congratulate the Honourable Sardar Vallabhbhai Patel for his great tact and ability in bringing a report to the satisfaction of the majority and minority communities of this land. The document that has been produced by the Advisory Committee, I consider to be the Magna Charta for the welfare of the Harijans of this land. Sir, as has been previously said by my friend, it was due to the third man residing in this country that brought out several minority communities. I do admit that, but, Sir, it was given to Mahatma Gandhi as a great *Avathar* to find the disabilities of a section of the Hindus, namely, depressed classes known by various names, to come to their rescue and to take that great epoch-making fast which evoked all the Caste Hindus in the whole realm of India to think what is 'Untouchables' what is 'Depressed Classes', what is 'Scheduled Castes' and what should be done for them. It was that Poona Pact to which you yourself have been a signatory along with me and Dr. Ambedkar, that produced a great awakening in this country. Then, Sir, one question was in the mind of everybody, whether the Poona Pact will show signs of a change of heart by caste Hindus in this country. Today I may assure you, Sir, that that change has come, though not full 100 per cent, at least more than 50 per cent. I may give you instances here. The very inclusion of Dr. Ambedkar in the present Dominion Cabinet is a change of heart of the Caste Hindus that the Harijans are not any more to be neglected. In my own Province, Sir, I may tell you the former Premier, Mr. Prakasam, has made a provision of a crore of rupees for the amelioration of the condition of the Depressed Classes (Hear, hear) and the present Premier Mr. Omandur Ramaswami Reddiar has set up a big Committee to investigate and bring a 5-year plan to ameliorate the condition of the Depressed Classes.

Now, Sir, coming to the very proposition of the consideration of this Report, I may say that any constitution that is made for the 300 millions of this country must have proper safeguards. Some may be thinking in their hearts whether they are not a minority of this land. Specially, Sir, the Untouchables who form one-sixth of the population of this sub-continent are a minority community, because their social, political and educational advancement is in a very low state. Sir, after the Poona Pact we are coming to the second stage. Actually this is the second stage because the untouchables, the scheduled castes are

[Shri V. I. Muniswami Pillai]

given certain facilities according to this report that has been presented in this House. One great point, Sir, which I would like to tell this House is that we got rid of the harmful mode of election by separate electorates. It has been buried seven fathom deep, never more to rise in our country. The conditions that were obtaining in the various provinces were the real cause for introducing the system of separate electorates. The Poona Pact gave us both the separate and joint electorates but now we have advised according to this report that has been presented here that the Depressed Classes are going to enjoy joint electorates. It is hoped, Sir, that, in the great Union that we are all envisaging that this country will become in the years to come,—joint electorates will give equal opportunity for the Caste Hindus and the Minority communities to come together and work together and produce a better India. Sir, now there is a reservation of seats on population basis. This is a rightful claim, Sir, of the Depressed Classes who form the tillers of the soil and hewers of wood that they must have equal voice in the administration of the land. Moreover, due to their economic condition it is not possible for them to contest the unreserved seats and it is a good augury on the part of the Advisory Committee to come with this important recommendation that all the minority communities besides their having the reservation in the various provincial legislatures, will, also have the right to contest seats in the unreserved seats. This forms a very good augury that hereafter both the Caste Hindus and the Harijans, that is the Scheduled castes, will go hand in hand so that whatever reform that may be brought to this land or in the Acts that may be brought before the Assembly and for the welfare of the country will be one accepted by all communities. Moreover this clause, allowing the minorities to contest the unreserved seats, shows the goodwill the majority communities are having towards the minority communities.

Much has been said about the representation of minorities in the Cabinet. I am one of those. Sir, who believe in political power for the elevation of the weaker sections of our land. It is by holding offices that these people are bound to come in contact with these unfortunate minority communities and see for themselves what should be done to elevate them. If I plead that there ought to be proper representation of these minorities in the Cabinet, I do not mean, Sir, that the Cabinets will become polluted or it will become inefficient but equal opportunity must be given. Once you give reservation on population basis, I also claim, Sir, that representation in the Cabinet also must be in that proportion. Sir, events have shown in this country that the members that have been drawn from Scheduled Castes to various offices as Ministers and Speakers of the Assemblies have proved equally good in the discharge of their duties. Let there be nothing in the minds of the majority communities that those who were chosen from these communities for high offices will not be efficient. I feel that a convention has to be created according to the 1935 Act, as recommended in the Report. I am sure that the goodwill of the majority communities will always be there to see that those weaklings, —the minority communities, are well represented in the Cabinets. Sir in the matter of services, I earnestly request that everything must be done to these minority communities so that they may have their quota

in the services of this great land. Often it is said though the Depressed Classes have the required qualification, under some pretext or other they are not given chances in the services. I wish, Sir, after this report has been accepted by the Constituent Assembly, those majority communities who will have the ruling say in the matter will see that the claims of the Scheduled Castes will not be forgotten. I know—as a matter of fact to start with, the present Dominion Cabinet have already issued an executive order setting aside 12½ per cent and 16½ per cent for the Scheduled Castes both in the competitive and non-competitive services. This is a very good augury and I am sure the change of heart will be followed further and proper quota for the representation of the Scheduled Castes in the services will be maintained.

Coming to the conclusion Sir, the report envisages creation of a Statutory Commission and also Officers in the provinces to investigate and see what are the real things that are keeping these people backward in all the social, economic and educational spheres and I welcome this because this will go a long way for this Commission and also the Officers to know for themselves what are the difficulties of the Scheduled Castes and during the next 10 years do such things, so that after the 10th year we, the Scheduled Castes, may not ask for reservations either in the provincial legislatures or in any of these things. It is up to the majority community to see that justice is done so that these minorities may rise in the educational and social sphere so that they may take equal share in the administration of this great land. Sir, there is a fear in the minds of some of my friends, especially the Scheduled Castes, that the Hindus are getting into power and that Hindu Raj is coming into force and they may introduce the Varnashrama that was obtaining years back, again to harass the Harijans. I may tell such friends, as we see things, the Varnashrama Dharma may be applied in a different sense—not in a sense that was obtaining years before —and I am sure this report will be accepted unanimously in this House and any amendments that may be brought may not disfigure the very good report that has been produced by my Honourable friend Sardar Vallabhbhai Patelji.

Mr. F. R. Anthony (C. P. & Berar: General): Mr. President, Sir, I feel that as a Member of the Minority Sub-Committee and also of the Advisory Committee I should say a few words on the Report. I might tell you that some of the issues were of a highly controversial character. Some of them involved argument and counter argument not only for hours but sometimes for days. But all the deliberations were conducted in the best traditions of generosity on both sides. It was not always an easy matter to cross swords successfully with an able and almost incredibly tenacious lawyer like Mr. Munshi. There were many points of view. Some people were guided, quite understandably from their points of view, by unalloyed principles. Others were fortunately more realistic and more statemanlike in their approach. So far as the interests of my community are concerned, I feel that I have to offer a special word of appreciation and thanks to those members who approached our problems in an attitude of realism, particularly to Sardar Patel. We from our side did everything we possibly could to come to an agreed solution which, I am glad to say, we did arrive at ultimately. I feel

[Mr. F. R. Anthony]

I must express the appreciation and the thanks of my community to those who realised the special needs of the Anglo-Indian community, and ultimately gave them shape in the report of the Advisory Committee. This report, Sir, represents a happy augury for the future. I have always been one of those who felt that we must modify our principles to suit realities. The path of statesmanship is the path of compromise. I am glad that statesmanship and a sense of realism were brought to bear on our proceedings and were infused into them by Sardar Patel. By being generous—that is what the majority community was in fact—by adopting an attitude of magnanimity to the minorities, you have helped to efface the fear that the needs and the points of view of the minorities would not be considered. By that act of statesmanship you have helped to harness completely the loyalty of the minorities to the tasks of nation-building which face us.

I believe that today the conditions are a challenge to the minorities. Every wise minority will look forward to the time, sooner or later, when it will take its place not under any communal label or designation, but as part and parcel of the whole Indian community. (*Hear hear*') I believe that the conditions today are a challenge, because of the background of events, to some members also of the majority community. I say to them : "Let us all march forward inspired by this spirit. Let us work up for this goal, that we shall sooner than later shed all communal labels and be bound together by the all-compelling sense of belonging to one Indian community. (*Applause*)

Sriyut Rohini Kumar Chaudhury (Assam : General) : I would like to take this opportunity of speakng on this motion to give expression to some of my feelings. In fact this is the first time that I rise to speak on any motion after we achieved our independence. I do not know, Sir, if I have correctly followed the course of this debate or understood what the implications of the report on the Rights of Minorities are. But it seems to me, —I hope to be excused for saying so,—but it seems to me that there are two kinds of minorities at present. One of them belongs to the India which was once ours and which had been decimated practically and which is now being protected by God in heaven and in His place, because that is the place, that is the sanctuary for all religious men and saints. Unlimited numbers of seats are being reserved for them in heaven from 16th August 1947 up till now. In spite of the great rush for seats in heaven, there seems to be no want of accommodation. We are not concerned with their goal. We are Members of the Constitution making body. We have nothing to do with their woes and miseries. We shall frame certain rules till Friday and after that we shall disperse on Saturday and go to the different Provincial Assemblies and Councils. We shall then enjoy the Dusserah vacation and Durga Pooja. We shall come again to give the finishing touches to this Constitution. Then there will be time enough for us to think of the unfortunate victims of our division of India. I am sure, Sir, the interests of these unfortunate people will be kept alive by adjourning this House for a few minutes or by observing silence for a minute or two and things like that. We thus pay homage in silence to those who have died fighting. We have established this convention now to observe silence for those who have died. This convention, I am afraid, will have to be followed for a very long time yet in this unfortunate country of ours.

Sir, there is another type of minority with which we are not immediately concerned. For that minorty I am glad to observe ample provision has been made. There have been seats reserved for them for a period of 10 years. They will have an opportunity of contesting the unreserved seats. With the reserved seats they will continue in their own communal party and secure also the unreserved seats through the benevolence of the Congress party. I believe that it will not take ten years, by this means, to make the minority community a majority community. From that time onwards there will be no minority communities. That is all as it should be, because we have adopted this policy and have divided our duty and our responsibility.

In the area which is known as Pakistan, the Government of that country would look after the interests of the majority and, in the area which is known as India, we shall devote ourselves to the protection of the minority. We have been doing so and we will go on merrily doing so.

Sir, while thinking of the minorities in the different provinces of this country, let not this House forget certain provinces which are absolutely backward, *e.g.*, Assam and Orissa, where not a single man can be found to fill up a seat in the Indian Government, where not a single man has been found to fill up the position of a Governor, where not a single man has been found fit to hold the high offices in the Railways or Posts and Telegraphs or even in the Imperial Secretariat which still retains its imperial character.

It is easy to call the Province a Cindrella province after keeping dust and ashes there and it is very easy to call in that way the people of a province who are suffering from an inferiority complex, after having done all that you could possibly do to deny them the opportunity given to the people of other provinces. Sir, I notice that there are some frowns on the faces of certain Honourable Members of this House, and I think for the sake of safety I must run back to my seat now.

Shri S. Nagappa (Madras: General): Mr. President, Sir, really it is a very imortant day in the annals of Indian History. Now, Sir, as my friend has already said the Committee deserves congratulations for having submitted an agreed report. I have to bring to your notice, that these minorities stood in our way of being free long long ago. The Britisher pleaded with these minorities all these days in order to delay to give us independence. It is only on the 15th of August we got independence and today it is only the 27th and within 12 days these minorities have come to an agreement. So, Sir, you can see how much unity there is in India. There was a kind of pose. They began to play with us, so that we seemed to be disunited for all times to come. Now within a few months we have come to understand each other and are able to present a Minority Committee Report, and that too an agreed report, though these were all—the majority of the members—from the minority communities. Does this not show the hollowness of our friends' sincerity when they pleaded to set apart our independence question all these days? But anyhow, I do not want to go into the past. Now, I am glad today we have been able to undo the mischief that was done 15 years ago by Ramsay Macdonald. It is he who was responsible for the destruction of today. He is the man

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who is responsible for the loss of life and loss of property in this country. If I have any power, I would have called him to answer these questions. It is he who sowed the seed of disunity and destruction about 15 years ago by giving the communal award.

Now, Sir, it is a very good and auspicious day that all the minorities have come together and are able to understand that the country's welfare is more important than that of an individual or a particular community.

Now, I particularly congratulate the Sardar for having been able to allow all the minorities to contest even the unreserved seats. It is a great thing. We have also to congratulate the Sardar for having been stiff when there was need to be so. It is statesmanship having sat tight in places where he ought to be. He has not conceded some of the demands, especially the percentage of votes. The qualities of statesmanship require generosity where generosity is to be shown and stiffness where it is needed.

Under the instrument of Instructions of the 1935 Act there is a provision for inclusion in the Cabinets. But it would have been better if there is an assurance for a minority community Member to be included in the Cabinet, and it would have been more satisfactory if there had been a statutory provision. For instance, I want to quote my own province. It is a province of 215 members. There are about 30 Harijans. They form one seventh of the Legislature and their population is 1/5th. They are 8 millions out of a total of 49 millions. They form 1/5th of the population, they form 1/7th of the legislature, but what is their share in this Cabinet? According to the strength of the Members they would have been two, because they are 1/7th and when the whole Cabinet is 14 or 13 it should have been two, but when the question came up, they have abolished a Harijan post. They have made it 13 and have not given even one. I say that the Harijans are not going to elect ministers. It is left to the Premier to select. The quota must be statutorily reserved. I feel that we should not be at the beck and call of the Premier. Let the Premier select the Ministers according to his choice. Why should we think that he has done us a great favour? It is our due share. We are not asking for anything gratis. So, Sir, this is how injustice will be done. Today we see with our naked eyes that injustice was done and therefore, it would have been better if an assurance is given to these minorities regarding their position in the Cabinet.

Now, Sir, it is not possible to make minority communities the Premiers, because the Premier is expected to command the confidence of the majority party. So it is no good to expect rotation to be applied for the Premiership. But there is every provision, every possibility, every probability to choose the Governors of the Provinces by rotation from among the various communities. It would have been easy if this had been included in the Report.

Again, Sir, it is not possible to make a minority community man to be the Dominion Premier but at the same time it is easy to make, say, for instance, out of 12 times, six will go to the general community and 3 times will go to the Scheduled Castes, 2 times will go to Muslims and 1 to other smaller minorities and out of a rotation of

12 one will be the share of the Dominion Presidentship, Governorship and Deputy Governorship, Deputy Presidentship etc. These things would have gone a long way to assure the minority communities that the majority is in favour of the minorities, and sincere towards minorities. As regards services I am glad very recently the Dominion Government has come out with its policy. I congratulate there also the Dominion Government. It has done justice to some communities and it has done more than justice, especially to the Christian Community or some such community. It has been fair there. I would suggest that it would have been better if it has been provided in the Report itself, for insance, a particular community will have its share according to its population. I do not want to rob Peter to pay Paul. It is a very bad policy. I want my due share; though I am innocent, ignorant, dumb, yet I want you to recognise my claim. Do not take advantage of my being dumb. Do not take advantage of my being innocent. I only want my due share and I do not want anything more. I do not want, like others, weightage or a separate state. Nobody has a better claim than us for a separate state. We are the aboriginals of this country.

Now, Sir, so far as the services are concerned, I congratulate the Dominion Government. It would have been better if a provision in this report had been made such that the Provinces also can copy. Even now it is not difficult for the Dominion Government to give instructions to Provincial Governments to copy that. Now, as regards the population, Sir, according to 1931 Census we are about 7 crores. We see that there had been an increase of 14 per cent. average increase. As poverty breeds population our minority might have increased by not less than 20 per cent.

This is the theory given by Malthus; I am not saying that. Because a rich man has a different standard of life and he would like to marry only when he attains some position or some power or property whereas if you go to the poor mans' quarters, you will see a number of children moving about, and if you go to the rich man, he will be praying to God to give him children. There is no surprise when Malthus says that poverty breeds population. If we were more than six crores in 1931, Sir, how is it that we have been reduced to five and a half crores in 1941? There is something behind it. Especially in Bihar and the Punjab, I am sorry, in Bengal, some mischief has been done by somebody. There was controversy between Hindus and Muslims. Both these people thought it safe to fall upon these poor and innocent Harijans and these people were converted or were added to the Hindu population as our people happen to be Hindu. Instead of increasing to seven, we have come down to five and a half crores. Therefore, I would request that in order to give seats to the Harijans, you should take the 1931 Census. That Census was not prepared by the Harijans. It was prepared by the Government machinery and we had no hand in it. There is not even a single Harijan that can do any mischief. After all, it is a Government record. You know there is a general increase in the population. You give us the average representation; I do not want any special provision. According to

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that Census, please work it out. I am afraid because future representation is assured on the population basis. If that is the case, in course of time,—within 10 years, two crores have been diminished; if it is left at this rate, within ten or twenty years, I am afraid there may not be a Harijan at all, Harijan in the real sense. As the honourable Premier of Bombay says, I would even prefer one seat if I am economically as good, if not better, at least equal, on a par with him. It is left to the constitution. It remains to be seen how much speed you will put in the matter of this community.

As a whole, on this report deserves to be congratulated, not only Sardar Patel, but each and every member of the Advisory Committee and Minorities Committee for having cooperated with him, for having been able to come up with such an agreed report. Sir, I recommend this report for the consideration of this House.

Dr. H. C. Mookherjee: (West Bengal: General): Mr. President, I must say at the beginning that I am not one of those who believe that the greatness of a country is increased by increasing the greatness or the economic or political importance of a particular group which is inside it. On the other hand, I have always advocated the placing of national interests above group interests. At the same time, my experience as Chairman of the Minorities Sub-Committee has convinced me that it was necessary for the sake of peace, for the sake of the future progress of our country, that every attempt should be made to meet the wishes of the minorities. I am a member of a minority community myself and I feel proud that the community of which I am a member has decided to give up all special privileges, and first of all I must thank my colleagues of my community who are members and who are present here today. Along with that it was realised that the several groups had distrust of the majority. Of course, personally speaking, I noticed that this was true of a majority among them and I have exhorted them and I am still exhorting them, again and again, to have some measure of trust. If they demand safeguards, those safeguards can be implemented only if the majority community can be trusted. But till this distrust is removed, I do recognise that something has to be done to meet their wishes. It is here that I must compliment Mr. Munshi, who in the Minorities Sub-Committee did so much, running from one group to another, in order to find their minimum demand, then pressing their case on the attention of the Minorities Committee and who got them carried in the Advisory Committee. I must bear witness to the good will and generosity that was shown to us by Sardar Patel. I therefore recommend the findings of the Advisory Committee to the House. At the same time, personally speaking, I must make it clear once more that I stand for trust of the majority and that I feel that some among us who stood for a more radical policy, have a kind of grievance against Sardar Patel because he has not allowed us freedom to carry it out though I also admit that we were defeated by a majority of the members.

Mr. President: We have had a long discussion on this motion. Although I do not wish to stop speakers, I would expect them to conclude discussion on this within the next ten minutes. There are two or three speakers still to speak and I would request members to confine their speeches to three minutes each. Mr. Sidhwa.

Mr. R. K. Sidhwa: (C. P. & Berar: General): Sir, I shall not take up much of the time of the House. From my boyhood, I have always believed that to serve humanity without any distinction of caste or creed is a very noble religious duty and with that end in view, I have always inculcated and advocated that view to my community. I am proud to state that my community have all along, notwithstanding the opposition of a section of my community, never advocated separate electorate or separate or special representation either in the legislature or in the services. I am also proud to state, I am glad to state that while we have not advocated any special representation, we have been really happy with joint electorate and non-reservation of seats in the legislature. Sardar Patel has rightly stated that we have taken part in politics, in education, in social and in all walks of life and we have made our view point felt amongst the majority in such a way that it was for them to realise and feel that they cannot ignore a community which has been really taking part in all these spheres of public life.

Sir, in the Minorities Sub-Committee, my friend and colleague Sir Homi Mody was in favour of special representation in the legislature and it was I who advocated very strongly against it. But I had only three votes against nearly 22, not because the members felt that I was not right, but the members felt that I was taking rather a rational view point and a more advanced view point. Let me tell you, the following day, without my approaching Sir Homi Mody, he realised that what I had said on the previous day was right, absolutely right and he himself changed his view point and on the following day, he said that he was not asking for any special representation for the Parsi community because he felt that if he did so, it was harmful to the community itself. From this point of view, you can see, as Sardar Patel said, that we have to adjust among ourselves. Without my approaching Sir Homi Modi privately or openly, he had to change his view. I would only impress upon the other minorities that if they really assimilated their view points now onwards with the majority view point, I can assure them, that in the period of ten years that has been given to them, they will have no grievance, they will have no complaint to make against the majority community. It is only the heart that is wanted on behalf of the minority to adjust themselves. I am of opinion that the ten years that have been given to them is a sufficiently long period. Within that period, I would appeal to the small minorities to adjust themselves so that at the end of ten years, they should not have to go to the majority and say "give this or give that", they must, on the contrary demand that we are entitled to this. They must carry it out just as our community have been doing.

With these words, I congratulate the committee for the generosity they have shown; some of the minorities did not deserve what they have got. I really give credit to the majority community for what they have done. I was opposing so many things; I had not a majority in the committee; but I was impressed all along by their noble and generous heart to accommodate the small minorities.

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I only wish, Sir, that the phrase "minorities" should be wiped out from the history. The ten years that have been given to them is a sufficiently long period and I hope that when we meet in the shortest period within ten years, these minorities will come and say "we are happy, we do not want anything".

Mr. Jaipal Singh (Bihar: General): Mr. President, I myself am a member of the Advisory Committee. So I would not like to congratulate myself and my colleagues. But I have come to say a few words on behalf of the Adibasis of India in so far as they are affected by the recommendations of the Minorities Sub-Committee. I do felicitate some of the smaller and, if I may say so in comparison with our own numbers, the infinitesimal minority groups like the Anglo-Indians and the Parsis, on their success. So far as the Anglo-Indians are concerned, they certainly have received more than their desserts. I do not grudge them that; let them have that, and good luck to them in the future. Our attitude has not been on grounds of being a numerical minority at all. Our position has nothing whatever to do with whether we are less than the Hindus or Muslims or more than the Parsis. Our standpoint is that there is a tremendous disparity in our social, economic and educational standards, and it is only by some statutory compulsion that we can come up to the general population level. I do not consider the Adibasis are a minority. I have always held that a group of people who are the original owners of this country, even if they are only a few, can never be considered a minority. They have prescriptive rights which no one can deny. We are not however asking for those prescriptive rights. We want to be treated like anybody else. In the past, thanks to the major political parties, thanks to the British Government and thanks to every enlightened Indian citizen, we have been isolated and kept, as it were, in a zoo. That has been the attitude of all people in the past. Our point now is that you have got to mix with us. We are willing to mix with you, and it is for that reason, because we shall compel you to come near us, because we must get near you, that we have insisted on a reservation of seats as far as the Legislatures are concerned. We have not asked and, in fact, we have never had separate electorates; only a small portion of the Adibasis, that part of it which was converted to various religions and particularly to the Christian religions of the West, had a separate electorate. But the vast majority, wherever it was enfranchised, was on a general electorate with reservation of seats. So, as far as the Adibasis are concerned there is no change whatever. But numerically there is a very big change. Under the 1935 Act, throughout the Legislatures in India, there were altogether only 24 Adibasi M.L.As. out of a total of 1,585, as far as the Provincial Legislatures were concerned and not a single representative at the Centre. Now in this adult franchise system of one member for one lakh population you can see the big jump. It will be ten times that figure. When I speak of Indian India may I also make my appeal to Princely India? In Princely India nowhere have Adibasis found any representation. I hope the spirit of Indian India will duly permeate there.

Mr. M. S. Aney (Deccan States): There is no non-Indian India now.

Mr. Jaipal Singh: I would explain to Mr. Aney that I was using a new phrase instead of 'British India' by calling it Indian India and calling the States Princely India. He may use some other expression if he so likes, but what I mean by Indian India is non-Princely India. I hope this spirit of trying to give a push to the most backward section of Indian society will permeate Indian States also.

Sir, a good deal has been said by my friends, the Scheduled Castes leaders, in gratitude in regard to the reservation that has been made for appointments. Only a few days ago the Government of India made announcement that a certain policy would be followed so that the scheduled castes would find a place in the Central Government. I deeply regret that the most needy, the most deserving group of Adibasis has been completely left out of the picture. I do hope that what I say here will reach the Government of India and that they will pay some attention to this particular item. We do not want reservation on any unequal terms. We desire that so long as we come up to the standards which are required for appointment we should not be kept out of the picture at all.

There is much more that one could say on the subject of Adibasis, but, as the House will have an opportunity to discuss that particular problem when the Reports of the two Tribal Sub-Committees come up before this Assembly, I need say no more now. But I commend that the recommendations of the Advisory Committee in regard to the minorities may receive the favourable consideration of this Assembly.

Mr. President: I think, I should now close the discussion. We have had enough of discussion on this point unless the House otherwise wishes. Members will get another opportunity when we come to the clauses.

The Honourable Sardar Vallabhbhai J. Patel: Sir, on behalf of the Advisory Committee I am grateful to all the Members of the Minorities Committee to all the Members of the Advisory Committee who have helped and co-operated in bringing out a report which is almost unanimous, a report which was expected to be very controversial and a report which has given general satisfaction as is evidenced from the speeches that have been made on the floor of the House. Therefore I move that the Report with its enclosure relating to Anglo-Indians of which I also made mention in my preliminary remarks, be taken into consideration. Then we can proceed clause by clause.

Mr. President: The question is:

"That the Report (with its Annexure relating to Anglo-Indians) be taken into consideration."

The motion was adopted.

Mr. President: We shall now take up the items in the Appendix to the Report.

The Honourable Sardar Vallabhbhai J. Patel: The first item refers to electorates. It reads:

"All elections to the Central and Provincial Legislatures will be held on the basis of joint electorates."

I assume that the House is unanimous on this point and therefore I do not propose to make any speech. Sir, I move.

Mr. President: Is there any amendment to this?

B. Pocker Sahib Bahadur: Mr. President, Sir, I must congratulate the Hon'ble the Mover of the motion for the spirit in which he moved it and for appealing to the House to forget the past and to carry on the discussion in a friendly spirit. I very much welcome that spirit and I shall certainly conform to the wishes of the Hon'ble the Mover. You know, Sir, that we are in very critical times, and every word that is said here will go very far either way, either to cementing the friendly relationship or creating dissensions among the people. Therefore, Sir, I have this in my mind when I have to propose my amendments in which I may have to differ from the Hon'ble the Mover and the recommendations of the Committee. With these remarks, Sir, I shall move my first amendment which is on the agenda. My amendment runs as follows:—

"That on a consideration of the report of the Advisory Committee on minorities, fundamental rights, etc., on minority rights this meeting of the Constituent Assembly resolves that all elections to the Central and Provincial Legislatures should, as far as Muslims are concerned, be held on the basis of separate electorates."

In making this motion, Sir, I am fully aware that there is a very strong section who feel differently from me and who not only feel that separate electorates are not desirable, but who also feel that it is the separate electorates that have been responsible for so many ills which have attacked this country and which are responsible for so much of misunderstanding that has caused so much harm to the country. Now, Sir, I would submit that in cosidering this question Honourable Members of this House should comply with the request of the Honourable the Mover and forget the past and begin with a clean slate. They ought not to apply their minds to this question with any pre-conceived notions which they might have entertained during recent years. They should forget all that has happened in the past, and look at the question only with the view as to how far this provision which I am proposing will be useful in developing a better understanding between the communities and how far it will contribute to the happiness of all the communities concerned. I would request them to divest themselves of all ideas of past incidents and look at the question entirely from the point of view as to how far it is necessary and advisable to cement friendly relationship hereafter and to see that all the communities in the land are contented and whether this provision will not lead to the happiness of all the communities concerned. I will request you to begin with the premise that it is our primary and fundamental duty to make the constitution in such a way that it will satisfy all communities and be conductive to contentment among all communities. I hope, Sir,, that the House will agree with me in saying that if important communities are left discontented and if they are left to get on with the feeling that they have not got an adequate voice in the governance of the country, that is an evil which we will have to avoid at any cost. The contentment and satisfaction of all communities in the land is the *sine qua non* of a good constitution which it is our religious duty to make here.

In some of the speeches I found that regret was expressed about the existence of what are called the minorities or perhaps minority communities. As a matter of fact there is no use in our going against

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In making this motion, Sir, I am fully aware that there is a very strong section who feel differently from me and who not only feel that separate electorates are not desirable, but who also feel that it is the separate electorates that have been responsible for so many ills which have attacked this country and which are responsible for so much of misunderstanding that has caused so much harm to the country. Now, Sir, I would submit that in cosidering this question Honourable Members of this House should comply with the request of the Honourable the Mover and forget the past and begin with a clean slate. They ought not to apply their minds to this question with any pre-conceived notions which they might have entertained during recent years. They should forget all that has happened in the past, and look at the question only with the view as to how far this provision which I am proposing will be useful in developing a better understanding between the communities and how far it will contribute to the happiness of all the communities concerned. I would request them to divest themselves of all ideas of past incidents and look at the question entirely from the point of view as to how far it is necessary and advisable to cement friendly relationship hereafter and to see that all the communities in the land are contented and whether this provision will not lead to the happiness of all the communities concerned. I will request you to begin with the premise that it is our primary and fundamental duty to make the constitution in such a way that it will satisfy all communities and be conductive to contentment among all communities. I hope, Sir,, that the House will agree with me in saying that if important communities are left discontented and if they are left to get on with the feeling that they have not got an adequate voice in the governance of the country, that is an evil which we will have to avoid at any cost. The contentment and satisfaction of all communities in the land is the *sine qua non* of a good constitution which it is our religious duty to make here.

In some of the speeches I found that regret was expressed about the existence of what are called the minorities or perhaps minority communities. As a matter of fact there is no use in our going against

human nature and having before us ideologies which are impossible or realisation. Human nature being what it is, there are bound to be minorities and minority communities in every land; and particularly in such a vast sub-continent as India they are bound to exist, and it is humanly impossible to erase them entirely out of existence. What we can do is to minimize differences between them and to do things in such a way that all minorities are satisfied and feel they are contented. In this matter there are two principles which have to be kept in view. There must be a spirit of give and take on the part of various communities, and particularly on the part of the majority community there must be a spirit of generosity. They should not measure things on an arithmetical or mathematical scale and try to argue on those points. When some minorities are working under great disabilities and feel that they have not had their share in the governance of the country, adequate provision should be made so as to satisfy them. Even if the majority feel that any particular minority is not right in claiming a particular method of achieving their end, even there I would say there must be a spirit of give and take and the majority community should be generous, and I appeal through you, Sir, to Hon'ble Members of this House to keep this particularly in view, and also remember that after all, if this generosity is exercised by the majority community, they are not going to suffer. The majority is a majority and the minorities are minorities. If by some special measure which may be proposed, some particular minority community gets a little more than what it deserves, according to their population or some such thing, even the majority community should act in a spirit of give and take and display a generous spirit. It is in this spirit that I appeal the House to look at this question. I have to make these preliminary remarks because I know there is a strong feeling against separate electorates in a large section of the people. It is also found in the Report of the Minority Committee and that of the Advisory Committee. They feel that it is a very dangerous thing to have separate electorates, or to recognise the principle of having separate electorates.

Now I have to tell you that there are various communities in this land and various minorities, and it is impossible in the very nature of things to erase them out of existence. As I have already said, it is our duty, it is the duty of those who make the constitution to make it in such a way that there are provisions in it to keep all of them contented.

Then, the next thing is how to give full effect to these considerations. I submit, Sir, that so long as it is recognised that the minorities should be kept satisfied, that their views and their grievances should be given an effective voice in the deliberations of the Legislature, I do say that the only way is to get at that man in that community who really represents that community. On the other hand, if you say that community has no right to exist as a community, and that it should be effaced by one stroke of the pen, then, Sir, I am certainly out of court. But you have to recognise, and it is absolutely necessary to recognise, that there are communities with vital differences among themselves, whether on grounds of religion or other

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differences. There are such communities, and it is our duty to provide for them constitutionally, that they are all adequately represented and the best and only effective way in which any particular community can be represented is by laying down a procedure by which the best man who can represent that community, who can voice forth the feelings of that community is elected to the legislature. That is the sole criterion on the basis of which we have to look at this question. The question now is whether in order to achieve that end, it is necessary to have separate electorates or not. That the interests of the communities should have a representation in the legislature is conceded even by the Report of the Committee. The only difference is that they want to achieve that purpose by some other means and I say by that means the end will not be achieved at all. What the Minorities committee says is, "Reserve a certain number of seats to candidates belonging to that particular community but on the basis of the joint electorate". Then, it is that person whom the majority community backs that will be elected. Perhaps that man may be a man liked by the majority under the guise of belonging to the minority community. There have been instances in which Muslims and Hindus joined together, in the old days of Non-Co-operation, and boycotted all legislatures, and simply for the sake of fun, some illiterate sweeper or scavenger, or some such person, was put up as a candidate as coming from a particular community in order to make a mockery of the whole show. If that could be done in those days, what I am asking is, whether such things will not recur. Of course, it all depends on the spirit in which the question is viewed, but I say the mere fact that a particular member belongs to a particular community is not a guarantee that his views represent the views of that particular community. That particular community, if at all it is to be represented, has got to elect the right man from among the members of that community. That is my apeal to you. If a worthless man or a man who is not capable of even understanding the needs of the community is elected from a particular community, he cannot be expected to represent that community simply because he is labelled as one belonging to that community. I submit, Sir, this is the criterion which should decide whether this report has given effect to the principle which they have accepted, namely, that the minority communities should be represented on the legislature. If, on the other hand the existence of the minorities and their right for representation are denied, well, then I have nothing more to say. But I would request you to approach this question in a generous spirit. I would request the Hon'ble Members to remember the days in which in pursuance of the Lucknow pact of 1916 separate electorates were recognised and the spirit in which both communities moved as brothers in the non-co-operation days of 1920. Now, Sir, if the communities were able to move as brothers and sisters in those days and they could lay the foundations for the achievement of independence which we have now gained, I do not see any reason why we cannot hereafter work on the same principle as brothers and sisters and work as members of the same family and make India one of the proudest

nations in the comity of nations. It is up to us to make India the foremost nation in the world, provided we act in a spirit of cordiality and friendship. In view of the spirit in which we were working in 1920 in the non-co-operation days, I say it is possible for us to work in the same spirit hereafter also. And I submit to you Sir, that it is upto the Members of this House to set an example by divesting themselves of pre-conceived notions that all the ills of the country were due to this system of separate electorates. I do not want to enter into discussions as to the correctness or otherwise of this notion. My only appeal to you is to join the Hon'ble Mover in asking you to forget the past and to act in a friendly spirit in the future.

I have to emphasise one point. The legislature is intended to make laws for the whole country and for all communities, and it is necessary that in that legislature the needs of all communities should be ventilated. I would submit that as matters stand at present in this country, it will be very difficult for members of particular communities, say the non-Muslims to realise the actual needs and requirements of the Muslim community. I say that even if a non-Muslim does his best to do what he can for the Muslim community, to represent their views, he will find it impossible to do so because he is not in a position to realise, understand and appreciate the actual needs of the members of that particular community, so long as he does not belong to that community. They will find it practically impossible to know exactly what the needs are. There are ever so many questions, particularly hereafter, which the communities will require to be ventilated in the legislatures. There may be legislation concerning wakfs, marriage, divorce and so many other things of social importance. I request the House to consider this matter from the reverse point of view. How would the Hindus feel if the Muslim were to represent their grievances in the legislature and provide effective remedies as regards say, temple entry, marriage customs etc.? I do admit that there may be efficient men on either side possessing knowledge of the needs of both Hindus and Muslims, but they will not be many. Therefore it is that I say that the principle should be that the best man in the particular community should represent the views of that community, and this purpose cannot be served except by means of separate electorates.

One more point I wish to place before you is this. This institution of separate electorates was being enjoyed by the Muslim community from the first decade of this century, *i.e.* for over 40 years, and now the moment independence has been obtained it is being abolished. It would be a very sad thing, I submit, to give rise to the feeling among Muslims that at this critical stage they are being deprived of the benefit of this institution now and that they are being ignored and their voice stifled. I request Honourable Members to avoid such a contingency and the creation of such a feeling among the Muslim community of India.

One other point I would like to mention is this. The Muslim community is well-organised. It is very necessary in the interests of the country as a whole that each of the important communities should be well-organised, so that all can come together and arrive at

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an understanding for the future governance of the country. At present the Muslims are strong and well-organised. Now, if they are made to feel that their voice cannot even be heard in the Legislature, they will become desperate. I would request you not to create that contingency. You are fully aware that at present there is very little difference between the Congress and the Muslim League as regards their objectives. No doubt, till recently they had wide differences, but somehow or other, wisely or unwisely, rightly or wrongly, they have been solved and an agreement has been reached between these two great organisations. The fundamental point on which they differed has been resolved and there is no difference really now. At this stage, they must join hands and destroy the subversive elements in the country. I am sure you will agree with me that there are a large number of elements in the land which are subversive and which act against law and order. Provincial Governments have taken full power in their hands to pass Ordinances in order to put a stop to these elements. Now, I appeal to the Honourable gentlemen of this House, both Congressmen and Muslims and other communities, to join hands and act together so that these subversive elements which have raised their head at this critical juncture of the history of this great land may be put down, and in order to do that, I say, inspite of the great difference of opinion that exists today, granting of separate electorates to the Muslims and allowing Muslims to have their voice heard in the Legislature so as to enable them to act hand in hand with the Congress will be the best method. Otherwise, these elements will be a very great danger to the safety of the people of the land, not only internally but also externally. I do not want to be more explicit on the point because I know that Hon'ble Members understand me when I say this. With these few words, Sir, I move my amendment.

There are, Mr. President, other amendments of which I have given notice. They come under one or other of the items in the Appendix and therefore I reserve my right to move them.

Mr. President: The amendment and the motion are now open to discussion.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I am extremely disappointed at the speech made by the previous speaker. I thought that after having obtained Pakistan my friends in India would change their attitude. I really wonder what more can be done. We are going too far and are trying to placate them in every possible way. I have got here the treaty entered into by Turkey regarding the protection of its minorities on 24th July 1923 at Geneva. I ask any of the protagonists of this amendment, to show me a single instance where in any part of the country, in any part of the world a political right has been conceded in the manner in which it has been conceded here. I ask the indulgence of the House to read article 39 of the Turkish treaty. It cannot be said that there is a greater nation in recent years standing for the rights of Muslims in the world than Turkey. Let us see what rights they have given to the other minorities in Turkey and what rights they have insisted upon for their nationals in other countries.

I have got here the two sides of the picture. There are the two agreements, printed in Constitutional Precedents No. III. I shall read article 39:

"Turkish nationals belonging to non-Muslim nations will enjoy the same civil and political rights as Muslims."

These rights they do have. That only means that they are entitled to stand shoulder to shoulder with the rest of the community, to stand for any seat anywhere without being trammelled, without being ineligible for any particular post or office. By all means, let them win the confidence of the entire community. That is the only way in which they can come together. What is the other method, I ask the Honourable Member. The germs of his complaint were sold since 1916, not by us, but by the Britishers. Let me go back into the history of our land a little earlier, though it may take some time of the House. Hindus and Muslims fought shoulder to shoulder as early as 1857. Let us not forget that we wanted to reinstate in our country the rule by our own people, whether Hindus or Muslims, wherever they were, in various parts of the country. They joined in a strenuous fight for the release of this country and for its independence. By whatever name the western historians might call it, it was a battle for independence. Then, the British Government wanted to play one community against the other. Sometimes they favoured the Hindus and sometimes the Muslims. It is no doubt true that some respectable and patriotic Europeans were the authors who put the idea of starting the Indian National Congress in our minds. It is no doubt true; but, what did their successors do? They found in a short time of fifteen years that the idea of independence had come to stay in this country. It was dangerous for them and therefore in 1903 Lord Curzon wanted to separate the Hindus and Muslims in Bengal. No man or woman, not even a child, would sleep until the arrangement for partition of that Province was annulled. Once again we came together and to-day on account of separate electorates we are separate again. I am told, Sir, that one day in 1916 a European who was responsible for separate electorates in this country wrote to his friend in England that he had achieved one of the best things in the world *viz.*, separating the Hindus and Muslims. There is no doubt that differences between the Hindus and Muslims do exist. One prays towards the East and the other towards the West. But there is also a common bond. Mohammad started his religion to bring the various warring elements together under a common banner. Religion in ancient days was an integrating power. There must be a common platform on which all could stand. I look forward to that day when humanity will be one, when all castes and creeds will disappear, (*Cheers*): when children are asked as to what religion they belonged, they may say "I do not belong to any religion but I am an Indian and do take pride in being one." I look forward to the day when there will be no difference. Even a child knows that the sex of the mother is different from that of the father. Though one electric bulb may be white and the other red, the current that is running through is one and the same. A philosopher is necessary to come and say amidst all these happenings, 'Let us bring millenium on earth'. In my part of the world, the Madras Presidency, though the Muslims are in a minority, they also

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joined in this move for separating the country. Have you a parallel to this carnage that is going on in the Punjab whoever may be responsible for it? It is a disgrace to our ancient religion and the religion of the Prophet. Neither the Seers nor Maharishis, if they will be looking on, will be satisfied with what is going on in the country. Is it not time for us wisely to consider what is responsible for this? We are all brothers. Can it be said that Mr. Pocker is different from myself? He speaks Tamil and I also speak Tamil. He cannot speak in Hindustani whereas I am able to understand and speak Hindustani in a smattering way. If tomorrow I become a Muslim do you think I will become less of a Madrasi? Unfortunately the country has been cut up and those people who may be responsible for it may be proud of it. After all it is like a fight between two brothers. I am a lawyer and I know of cases where a younger brother files a suit against the elder brother and where the elder brother says that the younger brother was not born to his father. After the case is over if there was marriage in elder brother's house the younger brother refuses to attend the same and the elder brother says 'It is no doubt true that we fought, but I am not going to celebrate the marriage if my younger brother does not attend it. Similarly some day Pakistan also may come back to us. What will be the effect of my friend Mr. Pocker's amendment? You go in the morning to the mosque and I go to the temple. But there will have to be a common platform where we have to join together on many matters. If there is famine we will all have to fight it. We expect if there is to be joint electorates, we will come together some time. Under the joint electorate system a Hindu can represent the Muslims and a Muslim the Hindus. I will represent much more than you do because I know I am not a Muslim and as such I will always have an inferiority complex and so look after your interests well. So why not take advantage of that? My friend Mr. Pocker says "I want a good, honest representative". What is the definition of goodness? Goodness does not come by being a Muslim or a Hindu. I believe he wants a man who effectively supports the Muslim cause. When there was carnage in Bengal, we did not bother to enquire how many were Hindus and how many were Muslims and we do not know even to this day. Unfortunately Hindus also sometimes feel "we are still human beings; when the country has been divided, why should they be protected still? Let this business be done away with". For Heaven sake avoid all this. Now he says that he is not the proper representative of the Muslims who has not got their confidence. Even a Hindu or a Muslim Priest will run the show if India is to become a Religious State instead of a Secular State. Nothing more than that. Therefore these are not the things that will bring us together. I am a Hindu and if you allow me to represent you, I will come to you at least every 4 years. Similarly a Muslim can come to the Hindus. Ultimately we will come together. This is possible only if we have joint electorates. If I do not come on his vote, if I am not his representative, what on earth is there to bind me to him? From the practical point of view, I ask my friend who moved this amendment if he is one or five or twenty in a House of two hundred, what is it that he can do without the co-operation of the others? Is he going to preach here Islam or read the Quran? Will I be allowed to read

the Vedas here? In this House, what is it one can do without the help of the majority? I expect very soon a secular State will arise here. Are you going to stand between us and the establishment of a secular State? Will you not profit by the events recorded in history? What was America 150 years ago? Will you not take a leaf out of their history books? 150 years ago, persons who were driven from their soil, sailed in S. S. Mayflower in search of other lands and reached "West India". That is the present America. Today they are the masters of the world in the economic field. They are the persons who today do this and that. They are teaching our people, who knew these things 5,000 years ago, how to clean our teeth and wash our faces. They do not know the fact that we do not take our food without first taking a bath. They come and tell us these things because, on account of the disintegrating forces working in our country, they have stolen a march over us. Did not the Italians, the Frenchmen, the Spaniards and others come together in the continent of America? Therefore it is up to us to create a secular State. It would not be wrong for me to quote Mr. Jinnah in this connection, whatever he might have said before Partition. He said: 'My idea is to have a secular State here'. Somebody asked: "Religious or secular?" He said: 'Hindus and Muslims are alike to me. They must have equal opportunities. I am trying to make a common nation for both of us'. Why should our Muslim friends who owe allegiance to Mr. Jinnah and whom they revere as I do, think differently in this matter? I am not prepared to call a single individual a minority. I do not like the word 'minority' at all. Therefore I am saying that I am opposed to this amendment.

Mr. B. Das (Orissa: General): Mr. President, may I ask whether we are to be allowed to discuss the things we have discussed for years again here on the floor of this House?

Mr. President: I appreciate the point of order raised by Mr. B. Das. I expect Members to confine themselves to the subject-matter of the motion which it is true is such that we can talk interminably on many points. I expect Members to have an eye on the clock also. Mr. Ayyangar has already taken more than 20 minutes.

Shri M. Ananthasayanam Ayyangar: Yes, Sir; but this is the first time I am speaking on this subject which is uppermost in our minds. It is not easy not to refer to certain happenings. In the Punjab, of the 165 civilian officers who were sent from here to Karachi by train, only two have returned. They have come back to India. That is the news in the "Hindustan Times" yesterday. What has become of the 163 civil servants belonging to the Secretariat at Delhi? Their fate is not yet known. I would spend not 20 minutes but even 20 years weeping and crying over happenings such as this I am trying to find a solution. I am trying to request my friend Mr. Pocker and appeal to him once again to develop a secular State. Ample provision for cultural, linguistic and educational matters has been made. And if there is any difficulty, let us sit together and surmount it. Let not the interest of any single community or individual be sacrificed for the cause of the rest.

As regards political matters, let us sit together and solve our problems. We have patched up our differences: if now we can build up a secular State, we can rear up our heads as the foremost nation in the

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world. We have nowadays been thinking of the culture of the West. The sun of wisdom that rose in the East has set in the West unfortunately. Let us revive that Sun. Let us make him rise gloriously in the East. With these few words I request my friend Mr. Pocker and the other gentleman who has joined him in tabling this amendment to withdraw it and stand unanimously for joint electorate.(*Cheers*)

Mr. President: I now call upon Mr. Mahavir Tyagi to speak. I hope he will be short and to the point and that he has heard my remarks made a few minutes ago.

Shri Mahavir Tyagi (U.P.: General): I am sorry the previous speaker has alarmed you, Sir. I have come here to oppose the amendment moved by Mr. Pocker. In compliance with your instructions I will not take much time, but before we proceed to the consideration of this question, I want to remind the House that our country has had a good deal of the experiment of separate electorates. Hindus and Muslims, who are here, are very familiar with it. This injection of deadly poison was given by the English who ruled over us.*

B. Pocker Sahib Bahadur: On a point of order, Sir. I understand that the Honourable Member is very familiar with the English language. Anyway, I would be very grateful if the Honourable Member will speak in English so that I may be able to follow him.

Shri Mahavir Tyagi: I can speak in English. But English not being my tongue, it is apt to be ungrammatical and un-idiomatic; if my friend is prepared to face this kind of English, I am quite willing to oblige him.

B. Pocker Sahib Bahadur: On a point of order, Sir, I understand when they came to keep us under bondage. They successfully gave us that injection. They in fact sowed the Dragon's teeth in the country and it grew and made us all communally conscious as Hindus and Muslims. They also made us irrigate this crop and we did it too willingly with our own blood instead of with water and the crop was well tended by them and today we are reaping that deadly crop. After that bitter experience of their diplomacy, if even today in this House we stand up and say, when we are building anew, when we are legislating for future generations, for our peace and for our happiness, that we should start with that poisonous injection again, this is something to which I cannot agree. We have seen enough of it. Today, when, as I just now submitted, we are reaping that deadly harvest, when on the borders of our country there is bloodshed and the worst disorder which civilisation has ever witnessed, when places lying only a hundred miles from here are not safe, it is time that we realised that all this is the result of the separatist tendency injected into our veins by the Britons. Now that we have thrown the British seven seas away from here it is surprising that we should again be asked to take up that separatist tendency and put that poison again into the Constitution which we are making today. I submit that the country as a whole is opposed to this. Personally I am a believer in unadulterated socialisation of both property and politics. I believe property should be

socialised. I am also a believer in unadulterated democracy, which means a true representation of the people; true, without any weightage, without any favour; without any disregard of the rightful privileges of any section of the people or any individual. Without depriving even the individual of his rights, there must be a free representation of all, and the legislatures—Central or Provincial—must fully represent all the people and must represent in a free manner. If we put obstacles in the way of any or stop the passage of others or give privilege to others, that will mean that the democracy or the representation of the people will not be as true and pure as it ought to be in an unadulterated democracy. To give the right of suffrage to a section of people on religious basis is something which the world does not understand. After all, we do not come here to legislate about religions. We come here to legislate and make laws to see that peace is maintained in the country on a country-wide basis. It is not a question of one section being legislated against or legislated in favour it is not a question of one or the other section being considered. It is the whole country which has to be taken into consideration when we legislate. So the idea of getting representation from religious sections in simply ridiculous. We have had it till now, but we cannot continue it, because the future constitution is not meant to be a constitution of religions. A State cannot be a confederation of so many religions or sects or groups. The laws and the administration of the country can only be entrusted to and can only be handled by those who command the biggest confidence in the country. The major political party will, as a rule, be in charge of the administration of a country. That is recognised everywhere. The minority must remain a minority. Now before a minority there is only one alternative: It is to be loyal to the majority and co-operate and gain the confidence of the majority. There are also other alternatives—which of course I do not advocate nor support—according to these alternatives minorities become extinct; and on the other side of the country this process of extinction is going on at present. Here Sir, I may be permitted to say that we belong to that part of the country which has guaranteed at the very outset safety of life and property to every one, to every individual in this country. We base our politics on love and truth and not on fear and hatred as is done by our neighbours on the west. We do not believe in discarding minorities or finishing them or killing them *en-masse*, because we are believers of conversion and we are confident of being able to convert them one and all to our side. We believe that minorities will in the long run be reduced to one entity and that entity would be one un-adulterated unity of people, a democracy. We want to dissolve minorities into the majority by *'justice'*. We want to rule this country and to run its administration on the basis of perfect justice. These minorities cannot be recognised because in a country whose administration is supposed to be run on the basis of justice alone, there is no question of minority or majority. All individuals are at par. We cannot recognise religions as far as the State is concerned. I wonder if my friends who have suggested separate electorate for minorities would aprreciate the remarks of a

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great leader of India. It is Mr. Jinnah who in his address to the Pakistan Assembly says :—

"We are starting with this fundamental principle that we are all citizens and equal citizens of one State. We would keep that in front of us as our ideal and in course of time you will find that in the political sense the Hindus will cease to be Hindus and Muslims will cease to be Muslims because religion is the personal faith of each individual." That is what the Governor-General of one of the parts of India says, Sir, he was known here to be the worst communalist, as it were, but even he, when he takes over the charge of a State, even he, when he takes up the reins of a communal State and the administration of a big country composed of Hindus and Muslims, he says so. It is very well known that his State is a Muhammadan State and they are proud of its being Muhammadan and they proudly call it "Pakistan"; even in that State he says religions will not be taken notice of by the State. Every individual will be an individual and Hindus will lose their Hinduship as far as their political rights and privileges are concerned. I submit Sir, that even they are believers of oneness of their people. Why should we introduce this separatist tendency into our politics? Sir, at another place the same very great leader says "you are free to go to your temples and places of worship in this State of Pakistan. You may belong to one religion or caste or creed, that has nothing to do with the business of the State." I submit Sir, Constitution making is the business of the State and Muhammadans as such have nothing to do with it. They are here, because they are citizens of India. We are one nation which stands for justice. We will legislate in a manner that will be a guarantee against all injustice and we shall not recognise any sections. Sir, this amendment is not in keeping with the high principles we last adopted and which we have passed as resolutions in the past.

Now with regard to the Report, I am glad to say that it is practically an unanimous one. Though I could not yet agree to the principle of reservation of seats, yet as we are just making some arrangement for minorities to be represented temporarily, I will not stand in the way. It is perhaps to satisfy their fears that some accommodation of their desires has been made. But I have failed to appreciate why they are allowed the liberty to stand for and contest general seats too. Every one knows that they cannot be successful from any extra seat after they have had their due share of seats reserved. Their failures will be quoted after ten years, as arguments against the removal of this reservation clause.

Suppose a candidate offers himself to stand for a general seat. To expect a Hindu to vote for a Mohammadan, especially in the Punjab side, is something which is terribly impossible. Nobody will vote. The circumstances have so changed. This again on account of this very separate electorate system of which we have practical experience. It will practically be a mockery to allow minority candidates to stand from the general seats as well. I submit, Sir, we should have only one electorate and that should be a joint one. The idea of accom-

modating the minorities for even ten years is not exactly in accord with our principles. I think, we have compromised and compromised enough. I am afraid even this compromise might also prove futile. Even this may have bad results. But in spite of this compromise. I submit that the report is very good and the members of the Committee are really to be congratulated for having produced practically a unanimous report which they have submitted to this House. We are proud of them and we shall also be proud of the joint electorate which they have recommended to the country. I hope we will accept their proposals as they are.

Shri T. Prakasam (Madras : General) : Sir, many of the leaders of the so-called minorities offered thanks and congratulations to the Honourable Members of the Committee and its Chairman, Sardar Vallabhbhai Patel for the generosity shown by the majority in this direction. I should say, Sir, they should be congratulated not for the generosity shown, but for discharging their duty as they have done now. There is nothing of generosity which has been shown by the members of the Committee or by you, Sir, as Chairman of the Committee. It is a duty that has been cast upon the majority which has not been discharged for such a long time. All these minorities have been allowed to be formed and developed to this stage, until we are shocked with the poison of communalism that has been there for such a long time. All this could have been checked in the past. We have been paying now, Sir, for all the sins of omissions and commissions of the majority, itself. It was the duty of the majority, Sir, to see that all these separatist tendencies had not developed, separate communities had not been formed. Now they have been put together just as they had been at one time. This is a country, as every one knows, where in the beginning there was only one religion, one God and one form of worship. All these later things had come up gradually. Look into the sequence of dates of all these religions that have been started. Take the Christian religion and mark the period when it came into existence. Take the Muslim religion and mark the period when it came into existence? What was the state of affairs before these religions came into existence? Before two thousand years and one thousand and three hundred years, there were no such things as these that prevail today.

But these religions are not and should not have been responsible for all the troubles that we witness today. I was present in Multan when the first Hindu-Muslim riot started and from there it is going on year after year, for such a long period until at last it has reached this stage. It is a very unfortunate state of affairs which could have been checked earlier. What is the reason for all these things? It is not the religion that is responsible. If today in the Punjab all these massacres and crimes are going on, it is not exclusively due to difference in religion. On the top of this so-called religion, what has come about is the desire, desire for profit, desire for office and desire for encroachment on others' properties. It is that thing that has come on the top of these things. I am very glad, Sir, that all these 27 years or 31 years of struggle, from the coming into this country of Mahatma Gandhi,

[Shri T. Prakasam]

though the whole thing developed into violence from the very first year or the second year, in spite of it, the majority had been watching carefully to see that these things are bridged, until at last, it has come to the honour and credit of the national cause, of the National Congress for the way in which the result has been brought about. At last, the victory has been won and the British people have left this country. In the wake of their leaving the country, all these troubles have come up in so many ways. I must congratulate this Committee and Sardar Patel for the manner in which all these communities which had been statutorily separated for such a long time, have been brought together and made to feel as one and made to agree. That is the highest point that has been gained. Even among the Muslims, Sir, after the so-called Pakistan or partition, friends who are sitting here, who are from almost every province, they are all agreed on the need for joint electorates. We should have had joint electorates for the last 25 years and there would have been no trouble in this country at all. It is only the desire for office, the desire for profit, the desire for encroaching upon others' rights dislodging others and taking possession that has brought about ruin upon this country. It is that thing that this national movement and struggle started under Mahatma Gandhi has tried to harness, check and focus into one and I should like to congratulate Sardar Patel for the way in which he has managed to bring all these different minority communities together and made them agree.

Also it is to the honour of this Committee and the exclusive privilege of this Committee and I should say of the people of this country to have secured this success and brought about a constitution like this which is being prepared. In that constitution, yesterday or day before yesterday, it was mentioned that one of the communities which was treated as a separate community should not be treated as a separate community. This is an occasion on which we are framing a constitution, a Union constitution, to have all the people put together. Let them not disagree; let them be treated as part of the majority. That is the way in which things are being forged and I agree that these are things which have gone wrong for ages together and for centuries together and that they could not be brought together in one moment and made to go together. That is why this committee has made this report in this careful manner and it is to the credit and honour of this committee that this great result has been achieved. I therefore congratulate this Committee and its Chairman Sardar Patel.

I am proud of the fact that you and I and all of us who have partake in this great struggle have survived to see this result and the way in which this is being forged and we are now almost coming to the end of it. Within ten years it is stated all these things will disappear. I have no doubt they would disappear within ten years or even less than that. Every one of us in the country should bear in mind that this does not take away from us the duty that is cast upon us in serving the country to remove this desire for place, desire for office and desire for others' properties.

We are reading in the press all that is going on in the Punjab today and all that is with a view to get hold of the properties and privilages

of those who are on the top. It is the duty of the Governor-General of Pakistan and the Government there to see that things are not allowed to go on in the manner in which they are going on and I have no doubt that every step is being taken on this side, so far as our government is concerned, and I hope that the Pakistan Governor-General and his Government would also see that people from here are allowed to go into West Punjab and see things for themselves. I would like to go into the West Punjab today, if I am allowed. Can I get the passage? Will I get the facilities to go and see with my own eyes myself what is going on there just as I can go to East Punjab and see what is going on there? It is these things that have got to be secured and I am sure that our leaders will see that they are secured. I have therefore much pleasure in congratulating the Committee and supporting the report.

Chaudhuri Khaliquzzaman (U. P.: Mulsim): Sir, so much has been said in favour of and against joint electorates and separate electorates during the last three decades that I do not think it is possible for anyone to add any new argument for or against them. However, I feel that it is my duty to point out one very serious objection which was urged against separate electorates. The objection was that it has helped a third party. Fortunately for us all that third party is no more here. Should we really visualise he situation as it stands today in its true perspective, much of the suspicion that hangs round this system of separate electorates will disappear. After all, if they are conceded to us, what will happen to this great majority? Today there is no third party to whom we can appeal. We have been witnessing things here. If anything happens in East Punjab or if there is any untoward incident in Delhi itself, we cannot go to the Governor-General or to anyone else. We have to go to Sardar Patel, because he has become the final arbiter of the fate of the minorities. What use is then that people should cite history, which history is as dead as bones? Surely there were very serious objections. Rightly or wrongly the Muslims did not realise that separate electorates were the cause of dividing communities. But today those arguments do not hold good. If you concede separate electorates, the Muslim communitv feels that they will help in returning their true representatives, representatives who will lay before you —not to any other power, not to any other Government, not even to Pakistan—our grievances and our claims. Therefore I beg of you and beg of this House to consider the new situation in which this question is being discussed.

I know and I am fully conscious that a great body of this House is opposed to separate electorates. Considering the short shrift that this demand received in the sub-committee and in the Advisory Committee on minorities, I had very little hope that we shall be listened to here

[Chaudhuri Khaliquzzaman]

but whether we are listened to or not, that is not the point. The question is: will the majority community here take into account the new situation in which this demand is made? Cast away your suspicions. I know that there is a large body of opinion both outside and inside this House which is not prepared to cast away these suspicions which have been created in the past against the Muslims. I would beg of you to realise that when we here accepted the citizenship of this State, we meant to be honest, we meant to be sincere. We have got to live here as a minority but living as a minority and as a citizen does not mean that we have not got any rights to urge for our own community or we should desist from doing it. But if we do that, I hope the old suspicions will not be revived, because whatever happens, whatever the decision of the majority might be, take it from me that the Muslims will accept it. But it is up to you to see whether you should not consider this demand of the Muslims, which they feel is likely to give them greater protection than otherwise, and see that it is accepted by this House. Therefore without giving any other argument, because I have no arguments to advance, I only appeal to you to consider the situation in the light of the changed circumstances and believing that it is the majority alone on whom we are going to rely for our demand, I hope you will accept it.

The Honourable Pandit Govind Ballabh Panth (U. P. : General) : Mr. President, I regret that the mover of the resolution should have considered it necessary to introduce this subject at this stage and in the existing circumstances. I had thought that we had outgrown the stage when sentiment instead of reason used to overpower us. My friend the leader of the Muslim League Party asked us to take note of the changed circumstances. That is exactly what I ask him to do. I regret very much that the magnitude of the great change that has come over this country has not been adequately appraised or appreciated. The mover does not seem to realise that since the 15th August the administration of this country has been made over lock stock and barrel to the people of this country. I may also assure him and those associated with him that I am trying to look at the question exclusively from the point of view of the minorities. I am one of those who feel that the success of democracy is to be measured by the amount of confidence that it generates in different sections of the community. I believe that every citizen in a free State should be treated in such a manner that not only his material wants but also his spiritual sense of self-respect may be fully satisfied. I also believe that the majority community should, while considering these questions, not only try to do justice, but throughout it should be informed and inspired by genuine feelings of regard for the minorities and all its decisions should be actuated by a real sense of understanding and sympathy. So when I am opposing this motion, it is because I am convinced that it would be suicidal for the minorities themselves if the system of separate electorates were countenanced and upheld now. In fact, we seem to forget the great change, as I said which has come over the political status of our country. In the olden days, whatever be the name under

which our Legislatures functioned, in reality they were no more than advisory bodies. The ultimate power was vested in the British and the British Parliament was the ultimate arbiter of our destiny. So long as the power was vested in the foreigners, I could understand the utility of separate electorates. Then perhaps the representatives of different communities could pose as the full-fledged advocates of their respective communities, and as the decision did not rest with the people of the country they could satisfy themselves with that position. But it is not merely a question of advocacy now. It is a question of having an effective, decisive voice in the affairs and in the deliberations of the Legislatures and the Parliament of this free country. Even if in an advisory capacity one were a very good advocate, he cannot be absolutely of any use whether to his clients or to himself if the Judge whom he has to address does not appreciate his arguments, sentiments or feelings, and there is no possibility of the Advocate ever becoming a Judge. I want the Advacate to have also before him the prospect of becoming a Judge. In the new status that we have now secured, every citizen in this country should in my opinion be able to rise to the fullest stature and always have the opportunity of influencing the decisions effectively; so I believe separate electorates will be suicidal to the minorities and will do them tremendous harm. If they are isolated for ever, they can never convert themselves into a majority and the feeling of frustration will cripple them even from the very beginning. What is it that you desire and what is our ultimate objective? Do the minorities always want to remain as minorities or do they ever expect to form an integral part of a great nation and as such to guide and control its destinies? If they do, can they ever achieve that aspiration and that ideal if they are isolated from the rest of the community? I think it would be extremely dangerous for them if they were segregated from the rest of the community and kept aloof in an air-tight compartment where they would have to rely on others even for the air they breathed. I want them to have a position in which their voice may cease to be discordant and shrill but may become powerful. The minorities if they are returned by separate electorates can never have any effective voice, and what have Mr. Jinnah, and other leaders of the Muslim League Party repeatedly declared? They had separate electorates and separate electorates with weightage and it was their definite pronouncement, after all the experience that they had for the last three decades of separate electorates, combined with weightage, that it was an illusory safeguard and that it did not secure their rights and their interests. In spite of separate electorates and weightage which the Muslims and the Hindus enjoyed in the Provinces of Bengal, Bihar and the North-West Frontier what have we not been hearing all these days during the last many months? Has the system of separate electorates helped them? Have separate electorates even with weightage been of any real assistance to them in this pitiable predicament? It is really unfortunate that in spite of all this experience there should still be a demand for separate electorates today.

Then again, what do the minorities desire? Do they want to have any share in the Government of the country and in its administration?

[Pandit Govind Ballabh Pant]

I tell you, you cannot have a genuine seat in the Cabinet if you segregate yourself from the rest of the community, for the Cabinet can only act as a team in a harmonious manner and unless every member of the Cabinet is answerable to a common electorate the Cabinet cannot function in a fruitful manner. Are you prepared to give up your right of representation in the Government? And will you be satisfied with the pitiable position of being no more than advocates—if advocates alone you wish to be—when your advocacy will be treated, if not with scorn and ridicule, but in any case with utter disregard and unconcern, which is bound to be the case when those who are judges are not in any way answerable to your electorate? Your safety lies in making yourselves an integral part of the organic whole which forms the real genuine State

Further, what is your ultimate ideal? Do you want a real national secular State or a theocratic State? If the latter, then in this Union of India a theocratic State can be only a Hindu State. Will it be to your interest to isolate yourself in such a manner? Will this State care for those who have no share or voice in the election of the representatives who will have real control of the affairs of the State? Will anything be more dangerous than that? Then you have also to consider, if such a system is introduced, how it will react on you now and hereafter. If you have separate electorates for the minorities, the inevitable result is that the majority becomes isolated from the minorities, and being thus cut off from the minorities, it can ride rough-shod upon them.

So I ask you whether you want the majority to be cut off in such a way that the majority will not be answerable to anybody belonging to your community and no one in the majority will have to care for your sentiments or for the reactions of his acts on you and your associates? Nothing will be more harmful than that. And do you not see the signs today? Do you not see the upsurge of cummunal passions even in quarters which had remained uncontaminated in the past? I have no doubt that from whichever point of view you may look at it, it will be extremely detrimental to your interests if you now clamour for separate electorates. Apart from other things, it is an obsolete anachronism today. In a free country nobody has ever heard of separate electorates. After all, what is the essence of democracy? For the success of democracy one must train himself in the art of self-discipline. In democracies one should care less for himself and more for others. There cannot be any divided loyalty. All loyalties must exclusively be centered round the State. If in a democracy, you create rival loyalties, or you create a system in which any individual or group, instead of suppressing his extravagance, cares nought for larger or other interests, then democracy is doomed. So, separate electorates are not only dangerous to the State and to society as a whole, but they are particularly harmful to the minorities. We all have had enough of this experience, and it is somewhat tragic to find that all that experience should be lost and still people should hug the exploded shibboleths and slogans. In the olden days one could have shouted like

that; but now, especially these days when we are seeing all the orgies of violence before our very eyes when we are every hour hearing the harrowing tales of massacres, of rapine, of plunder, of rape and what not, which make everyone of us hang his head in shame if not to hang himself by the neck, then I say, does it not occur to you that we have paid amply for this abominable cult of separation and we must grow wise?

We are now going to be free and we have paid a price for this freedom; we have Pakistan on the one side and the Union of India or Hindustan on the other side. There has been too much talk of treating the Muslims as aliens in Hindustan or the Hindus as aliens in Pakistan. Will this institution of separate electorates encourage the disruptive tendencies or will it bring about that cohesion without which neither state can exist? Do you want the citizens of one State to look to their co-religionists in the other State for their protection, or do you want them to be treated as equal citizens of their own free sovereign State? I want all minorities to have an honourable place in this Union of India. I want them to have full opportunities for self-realisation and self-fulfilment. I want this synthesis of cultures to go on so that we may have a State in which all will live as brothers and enjoy the fruits of the sacrifices of those who gave their all for the achievement of this freedom, fully maintaining and observing and following the principles of equality, liberty and fraternity. *(Loud cheers.)*.

Mr. President: We shall rise now and meet again at 3 o'clock.

Some Members: The question may be put.

Mr. President: If that is the wish of the Assembly, I shall put the closure.

The question is: that the question be now put.

The motion was adopted.

Mr. President: I call upon the Honourable Sardar Patel to reply, if he wishes to say any thing.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I will not take much time. I was sorry to learn that this question was taken seriously, because when this question came before the Advisory Committee, there was not so much debate as I heard here today. My friends of the Muslim League here who moved this amendment and supported it took it for granted that they had a duty to perform in a sense. They had been pressing for separate electorates and enjoying it for a long time and felt that they should not leave it all of a sudden, but just move the motion and have the vote of the House. But when I heard the elaborate speeches I thought that I was living in the ages in which the communal question was first mooted. I had not the occasion to hear the speeches which were made in the initial stages when this question of communal electorates was introduced in the Congress; but there are many eminent Muslims who have recorded their views that the greatest evil in this country which has been brought to pass is the communal electorate. The introduction of the system of communal

[The Honourable Sardar Vallabhbhai J. Patel]

electorates is a poison which has entered into the body politic of our country. Many Englishmen who were responsible for this also admitted that. But today, after agreeing to the separation of the country as a result of this communal electorate, I never thought that that proposition was going to be moved seriously, and even if it was moved seriously, that it would be taken seriously. Well, when Pakistan was conceded, at least it was assumed that there would be one nation in the rest of India—the 80 per cent. India—and there would be no attempt to talk of two nations here also. It is no use saying that we ask for separate electorates, because it is good for us. We have heard it long enough. We have heard it for years, and as a result of this agitation we are now a separate nation. The agitation was that "we are a separate nation, we cannot have either separate electorates or weightage or any other concessions or consideration sufficient for our protection. Therefore, give us a separate State". We said, "All right, take your separate State". But in the rest of India, in the 80 per cent of India, do you agree that there shall be one nation? Or do you still want the two-nations talk to be brought here also? I am against separate electorates. Can you show me one free country where there are separate electorates? If so, I shall be prepared to accept it. But in this unfortunate country if this separate electorate is going to be persisted in, even after the division of the country, woe betide the country; it is not worth living in. Therefore, I say, it is not for my good alone, it is for your own good that I say it, "forget the past. One day, we may be united". I wish well to Pakistan. Let it succeed; let them build in their own way. Let them prosper. Let us enter into a rivalry of prosperity, but let us not enter into that rivalry that is going on today in the land of Pakistan. You do not know that we are sitting in Delhi on a volcano. You do not know the strain that is being put on us because of what is happening nearabout. My friend the Mover of the amendment says the Muslim community today is a strong-knit community. Very good; I am glad to hear that, and therefore I say you have no business to ask for any props. (*Cheers*). Because there are other minorities who are not well-organised, and deserve special consideration and some safeguards, we want to be generous to them. But at the same time, as you have enjoyed this to a certain extent for a long time and you may not feel that there is discrimination, we agree to reservation according to population basis. Where is that kind of reservation in any other free country in the world? Will you show me? I ask you. You are a very well-organised community. Tell me, why do you behave like a lame man? Be a bold and a strong man, as you are well-organised and stand up. Think of the nation that is being built on this side. We have laid the foundation of a nation. From now, under this new constitution, Chaudhuri Khaliquzzaman says, the British element is gone, and therefore forget the suspicions. The British element is gone, but they have left the mischief behind. We do not want to perpetuate that mischief. (*Hear, hear*). When the British introduced this element they had not expected that they will have to go so soon. They wanted it for their easy administration. That is all right. But they have left

the legacy behind. Are we to get out of it or not? Therefore I say, and appeal to you. "What are you doing? Think about it. Do you expect any one man in this country outside the Muslim League who will say 'Let us now also agree to separate electorates'. Why do you do this? If you say "We want now to have loyalty on this side to this nation", may I ask you "Is this loyalty?" Are you provoking response of loyalty from the other side? I had no intention to speak on this, but when the Mover of this amendment talked such a long time and it was supported by the Leader, then I felt that there is something wrong again still in this land. Therefore, my dear friends, I ask you "Do you want now peace in this land? If so do away with it; you can do no harm either to Pakistan or India or anything, but only you will have all over the country what is happening in this country near about us; if you do want it, you can have it." But I appeal to you "Let us at least on this side show that everything is forgotten" and if we want to forget, then let us forget what has been done in the past and also what is responsible for all that is happening today. Therefore, I once more appeal to you to withdraw the amendment and let us pass this unanimously, so that the world outside will also understand that we are united. (*Cheers*).

Honourable Members: Withdraw!

Mr. President: I have now to put the amendment first to vote. The amendment reads:

"That on a consideration of the report of the Advisory Committee on minorities, fundamental rights, etc., on minority rights this meeting of the Constituent Assembly resolves that all elections to the Central and Provincial Legislatures should, as far as Muslims are concerned, be held on the basis of separate electorates."

The motion was negatived.

Mr. President: I now put the original motion to vote. It reads:

"All elections to the Central and Provincial Legislatures will be held on the basis of joint electorates."

The motion was adopted.

The House then adjourned till 3 of the Clock in the afternoon.

The Constituent Assembly of India re-assembled after Lunch at 3 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: We shall proceed with further discussion of the items, Sardar Patel.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move the proviso to the first item—

"Provided that as a general rule, there shall be reservation of seats for the minorities shown in the schedule in the various legislatures on the basis of their population:

Provided further that such reservation shall be for 10 years, the position to be reconsidered at the end of the period."

I move this for the acceptance of the House.

Mr. President: There are some amendments. The first is by Pandit Thakurdas Bhargava.

Pandit Thakur Das Bhargava (East Punjab: General): With your permission, Sir, I propose to move my amendment No. 19 in List I and not 18.

"That in the first Proviso to para. 1 for the word 'seats' the word 'representation' be substituted."

I am happy to move this amendment as it affords an opportunity to Mr. Munshi to move another amendment which I consider is the right one. I am sorry to say that I am not inclined in the present circumstances to say anything in support of my amendment.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, I move the following amendment to the amendment of Pandit Bhargava:

"That in amendment No. 19 of List I, dated 25th August 1947 for the word 'seats' the word 'representation' be substituted", the following words be substituted:—

"after the word 'schedule' the words 'and the section of the Hindu community referred to in paragraph 1A here of' be inserted."

The words of the proviso are these—

"Provided that as a general rule, there shall be reservation of seats for the minorities shown in the schedule."

and if my amendment was adopted it would read as follows:

"reservation of seats for the minorities shown in the schedule and the section of the Hindu Community referred to in paragraph 1A hereof."

I have also moved an amendment to No. 85 whereby the item of Scheduled castes is going to be removed to a separate para. No.1A and not included in the schedule.

The object of this amendment is to clarify the position of the so-called Scheduled Castes. The word 'minorities' so far as international treaties and international law is concerned, is only restricted to racial, linguistic and religious minorities. The Harijans, generally known as Scheduled Castes, are neither a racial minority nor a linguistic minority, not certainly a religious minority. Therefore in the interests of exact phraseology this amendment was found necessary. It was only, as members of the House will remember, when the Government of India Act was moved that the definition of 'minorities' was so extended by Sir Samuel Hoare as to include every minority which the Governor thought fit to consider as minority. This is a very very mischievous extension of the term and my amendment seeks to clarify the position that so far as the Scheduled Castes are concerned, they are not minorities in the strict meaning of the term; that the Harijans are part and parcel of the Hindu community, and the safeguards are given to them to protect their rights only till they are completely absorbed in the Hindu Community.

Another reason as this, and I might mention that that reason is based on the decisions which have already been taken by this House. The distinction between Hindu Community other than Scheduled Castes and the Scheduled Castes is the barrier of untouchability. Now, by the Fundamental Rights which we have accepted, untouchability is prohibited by law and its practice is made a criminal offence under the law of the Federation. We have also accepted in the Fundamental Rights that no public place should be prohibited to anyone by reason of his birth. So far as the Federation is concerned, we have removed the artificial barrier between one section of the Hindu Community and the other.

In view of those facts, any safeguard as a minority, so far as the Scheduled Castes are concerned, is illogical and will possibly prevent their complete absorption in the Hindu fold. I therefore submit that the amendment which I am moving clearly defines the position.

Mr. H. J. Khandekar (C .P. & Berar : General) : *[Mr. President, my amendment is very simple, and it is :

That in Appendix 5 wherever the word "population" has appeared in the proviso to para 1 at the end of para 3(c), and in para. 5, the following words should be added after that word :—

"In the case of Scheduled Castes according to 1931 census".

I want to tell the House my special reason for moving this amendment. India's population is increasing day by day. If we review the period between the census of 1911 and that of 1941, we discover that India's population has reached the figure of 40 crores. I want to place before you a fact which you all know that the Scheduled Castes belong to the lower strata which is in no way behind higher classes, in respect of increasing its numbers. If one child is born to a caste Hindu then four are born to a Scheduled Caste Hindu but it is very sad and surprising that the population of Harijans has been decreasing since 1931. I do not know why it is so. When we sought the reason for it we discovered that in 1941 Census in the provinces of Bengal and Bihar, some of our Muslim brethren got the Scheduled Castes registered as Muslims on the one hand and Caste Hindus got them registered as Hindus on the other. And this is the reason why ever since the 1931 Census our population has been continuously declining and in 1941 census the strength of scheduled Castes was less than in the 1931 Census by 2 crores. Therefore I have to place this amendment before you, because the minorities are getting their rights in the provincial and Central Assemblies according to their numerical strength, and if we get our rights according to 1941 census then our representation will be much less. The reason is that according to 1931 census we are few but even that is tolerable as compared to the 1941 census, when the latter was taken the war was on and it is possible that the census might not have been taken correctly, especially of the Scheduled Castes. Caste Hindus got Scheduled Castes registered as Hindus and the Muslims got them registered as Muslims. Therefore, I suspect that the 1941 census is absolutely wrong. Not only I but the whole Harijan community throughout the country loudly proclaimed that

*[English translation of Hindustani speech.

[Mr. H. J. Khandekar]

our strength as shown in the 1941 census was wrong and that our representation should not be based on that figure. Now there is no way out except that the mover of this resolution may give us an assurance that census will be taken again, in which case I will be prepared to withdraw my amendment. If the census had been taken fairly then our strength would have been much more, but as regards 1941 census, I greatly suspect that it is not a correct census so far as we are concerned. From this standpoint I put this amendment before you. I am aware that every member of this House has great sympathy for Scheduled Castes. I have heard many speeches. Many leaders sympathise with us, but that is of no use, if it is merely verbal. People say and I also affirm that we are a part and parcel of the Hindu community. If you oppose this amendment of mine, it will only mean that you are not prepared to give us anything more than what we are getting according to the 1941 census. When you say that they are Hindus and that a few seats less or a few seats more does not make much difference, then I will request, that if under the 1931 census we get a few seats more, the House should not hesitate to give us those seats. Therefore, I request the Honourable Mover that he may accept my amendment and give to the Scheduled Castes rights according to 1931 census. With these words I hope the Honourable Mover will accept my amendment.]*

Shri V. I. Muniswami Pillai: Sir, my friend Mr. Munshi made it clear that the Scheduled Castes form a minority. Still they are not considered to be a minority in view of the fact that they do not come under the three categories of the minorities mentioned. I may tell this House, Sir, till the 16th of May the Scheduled Castes were considered to be a minority in this respect, but later on when the Cabinet Mission came, by an unknown process they have eliminated the Depressed Classes, I mean the Scheduled Castes, and have taken only the other communities into account. But my friend, Mr. Munshi made it clear that since there is the disability for the Scheduled Castes, they will be given all the advantages as a minority and they will on no account be deprived of the facilities that are required by them. In that view, Sir, I think my amendment can be accepted. I move.

An Honourable Member: Mr. President, Sir, I would like to know how an amendment to an amendment could be moved unless the original amendment has been moved.

Mr. President: It is a consequential thing. Therefore I have allowed this opportunity of moving it now.

Shri S. Nagappa: Sir, Amendment No. 88. My friend Mr. Khandekar just now moved that the Census of 1931 . . .

Shri K. M. Munshi: I rise to a point of order. This is with reference to para. 3. Now we are on para. 1 in the schedule.

Shri S. Nagappa: That was moved.

Shri K. M. Munshi: That was an amendment to para. 1. The House is debating at the moment para. 1.

]*English translation of Hindustani speech.

Shri S. Nagappa: I am saying it is a similar amendment.

Mr. President: When we come to that, you can move it.

Shri K. M. Munshi: Sir, I have got another amendment. My amendment No. 2 relates to para. 1. It simply carries out the scheme of the first amendment that I have moved.

Mr. President: That is consequential.

Shri K. M. Munshi: Yes, carrying out the same idea. If you will permit me, Sir, to move it formally. The amendment which I move is this:

"That the words '7. Scheduled Castes' be deleted from the schedule and the following para. be added after it:

'1A. The section of the Hindu community referred to as Scheduled Castes as defined in Schedule I to the Government of India Act, 1935 shall have the same rights and benefits which are herein provided for minorities specified in the Schedule to para 1.' "

This is consequential to Harijans being removed from the category of minorities and placed as an independent category as a section of the Hindus. I move the amendment.

Mr. B. Das: Sir, I wish to move an amendment to the amendment moved by Mr. K. M. Munshi. He said, "The section of the Hindu community referred to as Scheduled Castes as defined in Schedule I to the Government of India Act, 1935". I wish to move this amendment: Instead of "defined in Schedule I to the Government of India Act, 1935", the words "to be defined in the Schedule to the Union Constitution Act".

I do not wish the Govenrment of India Act to be repeated. The Committee has gone into the Schedule of the Government of India Act which is referred to, and we can accept it as a Schedule of the Union Constitution Act. This is the amendment I move. The words "Government of India Act, 1935" be dropped and the words "to be defined in the Schedule of the Union Constitution Act" be inserted. That is the amendment I wish to move.

Shri K. Santhanam (Madras: General): Sir, I may offer one remark with regard to the latest amendment moved by Mr. B. Das. If we had prepared a Schedule, then it would have been relevant. Without a Schedule, to refer a matter to a non-existent schedule, I do not think is quite regular. Reference to Government of India Act 1935 is proper because it gives a concrete reference.

The points which I wanted to make are three. First, in this proviso there is the word "legislatures". I want to know if it is meant that this reservation should be both for the Lower and the Upper Houses. I assume that the reservation is meant only for the Lower House, because, under the constitution which we have adopted, the Upper Houses in the case of the provinces are to be elected on the Irish model while in the case of the Federation, it is to be on the model of the American Senate, elected by the provincial legislatures. I do not think that reservation should have any application to the Upper Houses of the legislatures and I think it may be clarified by saying "various Assemblies".

[Shri K. Santhanam]

Another point which I would like to point out is that this clause should not be made applicable to East Punjab and West Bengal. The conditions there are peculiar as a result of the partition. We do not know exactly what is the distribution of population there today. Unless we know the distribution of population, any such principle as reservation of seats on the basis of population would have unpredictable effects and therefore, until we know exactly the distribution of population in these two provinces, I think this clause should not be made applicable. I think, as a general rule, these two provinces should be treated as exempted from the present Report.

Another point which I would like to impress upon the mover of this amendment is that if, in a constituency, a minority community for which reservation is provided is in a majority, that constituency without any reservation should be treated as a reserved seat. Suppose for instance, in a District, Muslims are in a majority and that is a constituency. There are one or two seats. There is no reason why there should be a reservation in that constituency. I think for all practical purposes it should be included in the number of seats reserved. Unless it is done, it may lead to untoward consequences. Suppose in the whole District there is a Muslim majority and you have got three or five seats to that District. Are you reserving Muslim seats in a constituency where they are in a majority? I think it will be absurd. If you do not reserve, then their seats may not be counted in the reserved seats. This contingency must be duly provided for especially when this principle is to be applied to West Bengal and East Punjab. This will also become very material in certain parts of Bihar and in certain parts of the United Provinces. Therefore, my simple suggestion is, if in any constituency the minority community for which any reservation is made is in a majority, that constituency must be treated as already reserved by the very fact of the majority of the electorate and then the number of seats allotted to that constituency should be deducted from the total of reservation. I think this is a detail which has to be worked out with reference to each province, but the point deserves to be remembered.

There are many other considerations which arise from the fact of reservation on the basis of population into which I need not go now, and I shall deal with them when dealing with other matters. I suggest that these three points, namely, whether reservation is to be made applicable to the Upper Houses, whether this principle is applicable to West Bengal and East Punjab and how the constituencies where the minorities for which reservation is made are in a majority are to be dealt with, all these matters should be clarified or at least should be left over for future consideration and decision.

Prof. Shibban Lal Saksena (U. P.: General): Mr. Munshi moved an amendment to the schedule but the schedule has not yet been moved. I think his amendment can come only after my amendment has been moved.

Mr. President: What Mr. Munshi did was to move an amendment to the proviso in the first clause and he has not touched your amendment.

Rev. S. J. Jerome D'Souza (Madras: General): Mr. President, I should like to make a few very brief general observations on these provisos just presented to this House by Sardar Patel. Before doing so, let me also, though somewhat belatedly, express my very great gratification at the way in which these minority questions have been handled, the skill and tact with which a consensus of opinion has been secured in this report and the great kindness and spirit of understanding shown by Sardar Patel in dealing with these questions here and elsewhere in discussions.

I know that this question of reservation is something which has troubled the minds of a good many among us here, now that separate electorates have to be given up; and if there were doubts about giving them up, the extremely cogent and powerful exposition which we heard this morning should set all doubts at rest and should bring even the hesitators that there might be in general agreement with the thesis that separate electorates must go. But, on the other hand, it is not absolutely clear and many here are not convinced that reservation is the happiest substitute for them. This is a compromise and like all compromises there is bound to be an element of illogicality in it. I say this not because reservation itself is something wrong. There is an impression that reservation is anti-democratic and that it should somehow be got rid of in the course of the next ten or fewer years. I beg to say that I do not agree with this. Reservation in itself is one way of securing a satisfactory working of the electoral principle. Sir, after all we ourselves in this very House and in our Provincial circles are providing for upper Houses in which there will be functional representation. In its own way functional representation is nothing else than reservation of a very special kind. You reserve seats for particular interests. The misfortune here is that reservation is made on communal lines and secondly, the reservation being made, the elections to the reserved seat are not made exclusively by those on whose behalf the reservation is made, but by a general constituency, by a mixture in the electorates. Therein comes the difficulty and I beg this House to understand that the few misgivings that may have been expressed on this head are due to this and not to any other consideration. Nevertheless I believe that this principle of reservation with general electorates is a bold experiment though fraught with some risks, nonetheless worth making at this juncture for the satisfaction of all. It cannot be given up, because, if I may venture to remind the majority party in this House, for years together the Congress party has been associated with the demand that there shall be joint electorates with reservation. At this stage to give up reservation as some of my friends wish to do would be in contradiction to the promises held out, if not tacitly at least by implicit agreement. That is one reason why we cannot go back on this and I am most happy once again to say that the way in which the feelings of the minorities have been interpreted in this matter by Sardar Patel have filled us with satisfaction and reassurance and our thanks are due to him. As I said, we should all be happy if a day would come when reservation could be taken away and I am sure if that other opening, which has been left

[Rev. S. J.-Jerome D'Souza]

before this House and before this country, namely that general seats might be contested by members of those classes for whom reservation has been made, if that yields a certain amount of satisfaction, if a certain number of prominent and accepted people are elected on that basis, I am sure that the minorities will be encouraged at the end of a certain period to give up this reservation. This would dispel whatever fears they may have that under present arrangements people might be chosen to represent them who do not really represent them or who would not interpret their minds as they wish them to be interpreted. I would therefore conclude by appealing to this House to make this great experiment a success by working it in such a way that it satisfies minorities on whose behalf it has been placed here, that the men chosen may be men who would have the courage of their convictions and that the expression of their courageous convictions may not offend or in any other way displease the majority communities and that they would be taken as courageous and sincere people. Such an attitude would provide a safe outlet for feelings which might otherwise be suppressed and go underground, and thus prove an effective safeguard for the working of democracy.

We know that, though democracy of the parliamentary type has succeeded and succeeded remarkably well in England, it has failed elsewhere and it has failed precisely because majority parties or groups have known how to master the machinery of elections, they have known how to dominate public opinion. Formidable reactions against such method developed in certain European countries, and the ugly monster of fascism reared its head. But even Fascism, ugly as it was, sought to obviate the difficulty of possible suppression of indivdiual or minority opinion by thinking of a scheme which really comes to functional representation, namely, the forming of what they called a Corporative State, a device which has fallen into unmerited disrepute, because of its association with Fascism. If, Sir, these things are borne in mind and if a very fair trial is given to this scheme of joint electorates with reservation, it is possible that our country in making this innovation, this bold experiment, might save democracy from one of its obvious dangers and might perhaps set an example for a solution of minority problems which may be accepted elsewhere. I say this knowing well that the chances are not very abundant as to complete success in the sense that I indicated but I do hope that this will not be looked upon as an unpleasant and forced concession made to minorities but that i will be worked in the spirit in which it is given in order to give to those minorities the satisfaction for which they have pleaded before you.

Pandit Chaturbhuj Pathak (C. I. States): *[Mr. President, my colleague Mr. Khandekar has desired in his amendment that they (Scheduled Castes) should be given representation according to 1931 Census. In this connection I want to say a few words. If instead of 1941 census we give representation to the minorities on the basis of 1931 census, it will have its repercussions on other minorities as well.

*[English translation of Hindustani speech.

He has stated that there have been mistakes in the taking of Census because in some places they have been registered as Muslims and at other places they have been registered as Caste Hindus. Because the Muslims have increased their numbers in this way, they would also like to increase their representation according to 1941 Census. And if the forthcoming census which will take place after 4 years is correct and according to it the strength of the Scheduled castes increases, Mr. Khandekar will be tempted to suggest that they (Harijans) should be given representation not according to 1931 census, but according to 1951 census. I fail to see how this will be appropriate.]*

Shri H. J. Khandekar: *[I only suggest that a Census should be taken before allocation of seats or the allocations should be deferred till the census of 1951, or that our numerical strength be fixed according to the 1931 census. For my community, I will accept representation on the basis of the 1951 census or on one that may be taken now. But the census of 1941 is utterly wrong. Any division on that basis would be grossly unjust to the Harijans]*

Pandit Chaturbhuj Pathak: *[Mr. Khandekar has said that the birth-rate amongst Achchuts is high enough but at the census their number has not been recorded as high. The reason for this is that happily they have been enumerated amongst Caste Hindus. Mr. Khandekar has admitted this. It is good. The Caste Hindus themselves have pleaded for good treatment of Harijans and that they should be treated as Caste Hindus. Mr. Khandekar should have no objection to it.]*

Shri H. J. Khandekar: *[The Harijans have been counted amongst Caste Hindus only to increase the number of the Caste Hindus. This device has caused no change in the social life of Harijans. Those Harijans who have been classified amongst the Caste Hindus are still in the same deplorable state. Their standard is not the same as that of the Caste Hindus.]*

Shri Chaturbhuj Pathak: *[I do not think that when Achchuts are enumerated amongst the Caste Hindus they (at once) acquire the standard of Caste Hindus and they *ipso facto* get all the rights of Caste Hindus.

I have only to submit that I oppose Mr Khandekar's resolution to adopt representation on the basis of the 1931 Census. Even in the report submitted no mention of number is made. It is written there; "On the basis of their population"; *i.e.*, they would get representation according to their population. I support this (the report).]*

The Honourable Sardar Vallabhbhai J. Patel: Some amendments have been moved to this. One is by Mr. Munshi in which after the word 'schedule' he wants to say 'and the section of the Hindu community referred to in paragraph 1A hereof'. It is only intended for clarity and it makes no substantial change and therefore I propose to accept that amendment.

So far as Mr. Khandekar's amendment is concerned I do not think we can accept it because it would not be proper to make a special exception for the Scheduled Castes, that their reservation should be on

]* & *[ ]* English translation of Hindustani speech.

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the basis of one census and that reservation for other minority communities should be on the basis of another census. It would not be proper and it would be an invidious distinction. I do not understand why he wants to do that. Probably he wants to exclude some of those who have been included in the Scheduled Castes in 1931. I do not think it is proper to do so at this stage. In the resolution that I have moved, there is no mention of any census. We have simply said 'on the basis of their population'. Therefore it should be kept as it is. No injustice is being done to any community, and uniformity is also desirable and necessary.

Then Mr. Santhanam has moved an amendment and made two or three suggestions. One is about reservation of seats for the minorities in the various Legislatures. He says it should be 'various Leiislative Assemblies'. I have no objection to accepting that amendment.

He made another point that East Punjab should be excluded in clause 3.

Shri K. Santhanam: And West Bengal also.

The Honourable Sardar Vallabhbhai J. Patel: I do not think it is necessary to accept that amendment as they are specifically excluded in clause 3.

His third suggestion was that in a constituency where a minority community are in a majority the seats must be from the reserved seats. I do not consider the suggestion a proper one. The seats are on the basis of population reserved as a whole and not on a particular constituency. Therefore I do not propose to accept it.

To sum up, I propose to accept Mr. Munshi's amendment and Mr. Santhanam's suggestion about putting the words 'Legislative Assemblies'. I commend the resolution for the acceptance of the House.

Mr. President: I will now put the first amendment, which has been accepted by Sardar Patel, to vote.

The question is:

"That in amendment No. 19 of List I, dated 25th August 1947, for the words "for the word 'seats' the word 'representation' be substituted", the following words be substituted :—

'after the word 'schedule' the words 'and the section of ths Hindu Community referred to in paragraph 1A hereof' be inserted.' "

The motion was adopted.

Mr. H. V. Kamath: What about Mr. B. Das' amendment to this?

Mr. President: His amendment was that the words 'Government of India Act, 1935' be substituted by the words 'Union Constitution Act'. I think it is a verbal amendment and when the Act is actually drafted they will take care to define it in the correct way. Does he press it?

Mr. N. Gopalaswami Ayyangar (Madras: General): You cannot say 'Union Constitution Act'. As it stands, there is no schedule. The correct description is what Mr. Munshi has given.

Mr. President: As the Member is not here I will have to put the amendment to the vote of the House.

The question is:

"That for the words 'defined in Schedule 1 to the Government of India Act, 1935' the words 'to be defined in the Schedule to the Union Constitution Act' be substituted."

The amendment was negatived.

Mr. President: The next is Mr. Khandekar's amendment.

Mr. H. J. Khandekar: I withdraw my amendment.

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

Mr. President: The next is Mr. Muniswami Pillai's amendment, that for ten years' the words '12 years' should be substituted.

Shri V. I. Muniswami Pillai: I withdraw it.

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

Mr. President: The question is:

"That the two Provisos as amended be adopted."

The motion was adopted.

Mr. President: We now take up the Schedule.

The Honourable Sardar Vallabhbhai J. Patel: I move for the acceptance of the House the Schedule that is put in under para 1. I shall in doing so first read it.

SCHEDULE

GROUP A.—Population less than ½ per cent. in the Indian Dominion, omitting States.

1. Anglo-Indians.
2. Parsees.
3. Plains' tribesmen in Assam (other than Tea Gardens' tribesmen).

B.—Population not more than 1½ per cent.

4. Indian Christians.
5. Sikhs.

C.—Population exceeding 1½ per cent.

6. Muslims.
7. Scheduled Castes.

This Schedule is based on the strength of the communities in order that the relevant provisions in the subsequent sections may fit in and therefore this is merely a formal matter. There is no controversy about it. I therefore move that this Schedule be accepted.

Mr. President: There is only one amendment to this and that is from Prof. Shibbanlal Saksena. Of course it is covered by the amendment which we have passed just now. But it has to be formally dropped, so he may move it.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President Sir, my amendment is No. 85 and it says that the words "scheduled castes" be deleted from the schedule. The purpose of the amendment is that scheduled castes should not be classed as a separate minority but should be treated as an integral part of the Hindu community. My amendment reads—

That from group C of the Schedule to para 1, the words "7 Scheduled castes" be deleted.

[Prof. Shibban Lal Saksena]

I would like to draw the attention of the Assembly to one important declaration. It is this. It will be remembered that Mr. Jinnah has often tried to include the Scheduled castes in the minorities; and on June 26, 1946, in a letter from Maulana Abul Kalam Azad to Lord Wavell, and the latter's reply thereto, Lord Wavell is reported to have said:

". . . . if any vacancy occurs among the seats allotted to the minorities, I shall naturally consult both the main parties before filling it."

Mr. Jinnah has thus included the Scheduled Castes among the minorities. But so far as we are concerned, we consider the Scheduled Castes as belonging to Hindus, they are not a minority, they have always formed part of us. I am glad Mr. Munshi has brought up his amendment which meets my purpose and I therefore withdraw my amendment, in favour of his.

Shri K. M. Munshi (Bombay: General): Sir, because amendment No. 85 has been moved by Prof. Shibbanlal Saksena I move the amendment standing in my name:—

"That in amendment No. 85 of List III, dated 26th August 1947, the words "7. Scheduled Castes" be deleted and the following para. be added after para:—

"1-A. The section of the Hindu community referred to as Scheduled Castes as defined in Schedule I to the Government of India Act, 1935, shall have the same rights and benefits which are herein provided for minorities specified in the Schedule to para. 1."

Shri Lakshminarayan Sahu (Orissa: General): Sir, on this Schedule I want to say one thing about the aboriginals. I think there should be some provision here so that the aboriginals also may find a place in this Schedule. The fact is there are two and a half crores of aboriginals in. ... ...

The Honourable Sardar Vallabhbhai J. Patel: There is a separate Committee going into the question of the aboriginals and other tribes and its report will come up. The question will be considered when we consider that report.

Shri Lakshminarayan Sahu: But could we not make some provision here?

Mr. President: There is a separate committee appointed for the aboriginals and other tribes and if there is any such recommendation in that committee's report, then we can take it up for consideration when considering that report.

Mr. Jaipal Singh: Sir, I would like to know whether it was not the idea that item A. 3. "Plains tribesmen in Assam" should be left over till the final report of the committees was received? I thought it was decided in the Advisory Committee not to discuss item A. 3. but I find that item included here.

Mr. President: I am afraid I have not been able to follow what you said.

Mr. Jaipal Singh: The report of the Committee will be before us before tomorrow afternoon. Pending that, I suggest that this item A. 3 be left alone, that the wording be left untouched and not discussed now. Let us get on to it afterwards, say, tomorrow.

Mr. President: You therefore suggest that A. 3. "Plains Tribesmen in Assam" be taken out from the list?

Mr. Jaipal Singh: Yes, taken out now, and the wording decided on tomorrow.

Mr. President: It will come up when the report of the Tribals Committee comes up. For the present it will be left alone.

The Honourable Shrijut Gopinath Bardoloi (Assam: General): Sir, I am afraid Mr. Jaipal Singh is making a mistake. The question now is whether the Plains Tribals in Assam are to be recognised as a minority, and that has been decided by the Minority Committee, and that is what we are considering. But what concessions are to be given to them has been left over, for a joint report to be received from the Advisory Committee and that report will be coming before us tomorrow or sometime after.

Shrijut Omeo Kumar Das (Assam: General): Sir, I have an amendment, No. 57, saying—

"That in the Schedule to para. 1, for the words 'Plains' tribesmen of 'Assam' the words 'Plain Tribesmen of Assam other than tea garden tribes' be substituted."

Have I to move it now? Or am I to understand that it has been already accepted.

The Honourable Sardar Vallabhbhai J. Patel: It has been accepted that the words "Plains Tribesmen of Assam other than tea garden tribes" be substituted for the words "Plains' tribesmen of Assam".

Mr. President: Yes, he has accepted that.

Shri Lakshminarayan Sahu: Once that is included, cannot I say that the aboriginals should also be included in the Schedule? Sir, the hill tribes of Orissa number fifteen lakhs and form one-sixth of the population.

Mr. President: But you have not given notice of any such amendment. Probably everyone thought that this matter would, anyway, be coming up along with the report of the Sub-Committee which has been appointed. Therefore, no one has given notice of any amendment on this matter. I take it that when the recommendations of that sub-committee are received and if they go counter to what is decided here, it will, to that extent act as an amendment.

The Honourable Sardar Vallabhbhai J. Patel: When the report of that Sub-Committee comes up, the safeguards for the tribes will be included according to that report. Here we have an enumeration of the different classes of minorities according to their strength. Therefore, so far as the Schedule is concerned, there is no reason to suspect or doubt anything. Whatever safeguards are recommended by that Sub-Committee will be provided for. There is no occasion for any doubt.

Mr. Jaipal Singh: On a point of order, Sir. May I know when we are discussing the question of minorities, whether this has been submitted by the Advisory Committee or the Minority Committee only? If I remember aright, this particular item was held over and it was agreed that it was not to be brought up for discussion here till the reports of the two Tribal Committees had been presented.

Shri K. M. Munshi: May I say one word about this? There seems to be some amount of confusion on this point. If you will look at the Report itself, the position will be made clear. In para 8 of the Report, it is said: "The case of these tribesmen will be taken up after the report of the Excluded and Partially Excluded Areas Sub-Committee is received." But at the same time, look at para 5. It enumerates the minorities which will be entitled to some rights. So in Group A you find the words "Plains tribesmen in Assam." Therefore, what was postponed was not the incorporation of the Plains tribesmen in the

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Schedule but the safeguards, which may have to be extended or altered after the report of the Excluded Areas Committee is received by the House. What is sought to be done now is to complete the Schedule by incorporating 'Plains tribesmen in Assam'. It is not as if it decides what the safeguards are going to be. That is the position and therefore there is nothing inconsistent.

The Honourable Rev. J. J. M. Nichols Roy (Assam: General): I want to ask one question for clarification. It is stated in Group A, item 3 "Plains tribesmen in Assam other than garden tribes". I understand by the term "other than garden tribes" it is meant garden tribes working as a labour population in the gardens and not those tribes that have settled in Assam who have had land and property there. Is that the meaning?

Mr. President: I think that is the meaning.

Dr. P. S. Deshmukh: There is an amendment in my name. It reads as follows:—

"That in schedule to para. 1, the following be added:

'GROUP D.—Educationally advanced and wealthy minority castes and communities in the various Provinces.

NOTE 1.—It shall be provided that persons belonging to these minorities shall not have the right to contest unreserved seats.

NOTE 2.—A list of these minorities shall be as determined by each legislature of the existing Provinces."

The main purpose of my amendment is to safeguard the interests of the very small minorities, who are bound to find it very difficult to maintain their own, once the adult franchise is introduced. I mean the highly educated castes and castes and communities that own a very large portion of the wealth of the whole country. At the moment, they are both very powerful. The former monopolise Government services and higher appointments. They are masters of the platform, and the Press is a pretty-maid in their sole keeping. They appear to be the only people who matter and there is nothing that is not within the hollow of their hands if they will it. Education gave them unlimited opportunities of serving the British interests and discharge their duties so loyally and to such complete satisfaction of their erstwhile masters. The communities which have lived by money-lending and trade also supplied to the British rulers the sinews of war and all the requirements of peace. If these should now appear to be the only fortunate people in India, nobody need be surprised. The credit of maintaining and sustaining the British rule in India is after all theirs. It could not suit them to join the revolution of 1942 and risk their lives. Whilst some went to jail quietly, others who loved the British less sacrificed everything they had including their lives. Those who sacrificed in this way feel that their interests are not being protected and their sacrifices are not being recognised. There is, therefore, in their opinion, nothing better than mere lip sympathy. That being so, the highly educated and well-to-do are likely hereafter to be much disliked and possibly persecuted. It behoves us therefore to be prudent and protect their interests by a provision in the constitution. These communities may, for the time being, be very sure of scoring over everybody else either on the score of academic careers or wealth, but

I would like to warn them that their calculations may prove to be wrong. They are, I know, likely to question even my motives, but let me tell them that I wish them well.

Mr. H. V. Kamath: May I request you to define the words "Highly educated and wealthy"?

Dr. P. S. Deshmukh: I will do it when the amendment is accepted by my Honourable friend. They are, I know, likely to question my motives, but the reason why they should not be permitted to contest other seats is that after all they belong to the worst parasitic castes and in a real democracy which we are aiming at, it would not be proper that they should have unrestricted and unrestrained right to override the claims of the other people. How else are you going to safeguard these people, in the words of my friend Mr. Tyagi, from annihilation? I think the only way is to give them reserved seats and at the same time keep them away from other unreserved seats. But, Sir, I know that the sentiments I express and the socialistic bias that I would like this constitution to have is not very popular with the House as it is constituted today. Under the circumstances, I merely wish to make these observations for the consideration of the framers of the constitution. I have no desire to move my amendment.

Mr. President: I never thought that Dr. Deshmukh would really move his amendment seriously. I think he does not deserve any protection himself, although he himself belongs to the wealthy and well-educated class. I had by chance omitted to call him to move his amendment, but I now find that what I considered to be a mistake by chance was really a correct thing for me to do. (Laughter.) However, these are all the amendments of which I have notice. Sardar Vallabhbhai Patel may say anything if he likes.

The Honourable Sardar Vallabhbhai J. Patel: I did not expect any debate on this; however, it has taken place. I have already accepted the amendment moved by Mr. Shibbanlal Saksena and I now commend the Schedule for the acceptance of the House.

Mr. President: I now put the amendment which has been accepted by Sardar Vallabhbhai Patel of Mr. Shibbanlal Saksena.

The amendment was adopted.

Mr. President: I now put Mr. Munshi's amendment to Mr. Shibbanlal Saksena's amendment.

The amendment was adopted.

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

The motion was adopted.

Mr. President: We now go to clause 2.

The Honourable Sardar Vallabhbhai J. Patel:

"Anglo-Indians: (a) There shall be no reservation of seats for the Anglo-Indians, but the President of the Union and the Governors of Provinces shall have power to nominate their representatives in the Centre and the Provinces respectively if they fail to secure adequate representation in the legislatures as a result of the general election."

This is an agreed solution so far as the Anglo-Indian Community is concerned and I do not suppose anybody can move any amendment to

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this because as the community is satisfied with the proposal and as the Advisory Committee has accepted it unanimously I recommend this for the acceptance of the House.

Shri K. Santhanam: I have one or two doubts to be cleared. I suppose here 'Legislatures' will be 'Assemblies'. Then does it mean that in every province the Governor would appoint representatives of Anglo-Indians?

The Honourable Sardar Vallabhbhai J. Patel: It means what is stated there.

Mr. President: I put this now to vote.

Clause 2 was adopted.

Mr. President: This reminds me, I made a mistake when I put the first clause I did not say 'Provincial Assembly'. I put Provincial Legislature. I take it the House accepts that.

We go to the next item.

The Honourable Sardar Vallabhbhai J. Patel: I move—

"Parsees—(b): There shall be no statutory reservation in favour of the Parsee Community, but they would continue to remain on the list of recognised minorities:

Provided that if as a result of elections during the period prescribed in proviso 2 to para. 1 above it was found that the Parsee Community had not secured proper representation, their claims for reserved seats would be reconsidered and adequate representation provided should the separate representation of minorities continue to be a feature of the Constitution."

This is also an agreed thing between the Parsee Community and the Advisory Committee. Therefore I recommend that this should be accepted.

Mr. President: I take it that there is no discussion required on this.

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel: I move—

"3. (a) Indian Christians—(a) There shall be reserved representation for Indian Christians in proportion to their population in the Central Legislature and in the Provincial Legislatures of Madras and Bombay. In other provinces, they will have the right to seek election from the general seats."

This is also an agreed thing between the Christian Community and the Advisory Committee. Therefore I recommend this for the acceptance of the House.

Sri B. Gopala Reddy: (Madras: General): It includes Councils also I believe. In Madras we have 3 reserved seats in the Council.

Mr. President: Yes. I take it here it means the Legislative Assembly and Council. I put it to the House.

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel: The Punjab question we propose to postpone till the conditions in the Punjab are properly ascertained and settled. The question is kept over and I suggest the House may agree to it.

Mr. President: The question of minority rights in Eastern Punjab will be considered separately. I think there is an amendment which says 'Western Bengal' also should be added to it. Should that also be included?

Shri K. M. Munshi: Amendment No. 24 by Pandit Thakurdas Bhargava relates to Eastern Punjab to which I have moved an amendment (No. 3) just to carry out the intention of the Honourable the Mover.

Mr. President: We take the amendment of Mr. Munshi at this stage.

Pandit Thakurdas Bhargava: My amendment is to (c) of para 3. I move it. It reads: That in sub-para. (c) of para. 3 for the word "seats" the word "representation" be substituted.

Shri K. M. Munshi: Sir, I move the amendment which says:—

"That in amendment No. 2; of List I, dated 25th August 1947, for the words (c) of para. 3 for the word 'seats' the word 'representation' be substituted:—

(b) of para. 3. Delete the words beginning with 'Sikhs (b)' etc., to the end and substitute the following:—

'East Punjab (b). In view of the special situation of East Punjab the whole question relating to it will be considered later.' "

If my amendment is accepted, the clause will read as follows:—

"Sikhs—(b) In view of the special situation in Eastern Punjab the whole question relating to it will be considered later."

This will take the place of the present paragraph.

Mr. S. M. Rizwan Allah (U.P.: Muslim): Sir, I beg to raise a point of order on this amendment. This is a Report of the Minorities Committee. Different provisions have been laid down in this report about various minorities. So far as the Sikhs are concerned, no decision has been arrived at in the Minorities Committee Report about them. It is stated in this Report that the matter about Sikhs will be decided later on. Now an amendment has been tabled to replace a Province instead of Sikhs and thus in place of a minority an issue about territory is brought in. This is a report for the minorities and has nothing to do with any Province and therefore the amendment is out of order.

Mr. President: I do not think the point of order really arises. As a matter of fact there are other minorities in that Province and the whole question of minorities is held over. So it is quite in order.

Now I put Mr. Munshi's amendment which is this:—

"(b) of para. 3. delete the words beginning with 'Sikhs (b).' The question of minority rights for the Sikhs will be considered separately, and substitute the following:—

'East Punjab (b). In view of the special situation of East Punjab the whole question relating to it will be considered later.' "

The amendment was adopted.

The Honourable Sardar Vallabhbhai J. Patel:

"*Muslims and Scheduled Castes.*—(c) There shall be reservation of seats for the Muslims and Scheduled Castes in the Central and Provincial Legislatures on the basis of their population."

I move the above clause for the acceptance of the House.

Prof. Shibbanlal Saksena: Mr. President, Sir, as the amendments to Clause 1 by Mr. Munshi' and myself have been accepted, it is necessary that in para. 3, the words "and Scheduled Castes" wherever they occur be deleted.

Mr. President: I take it that is a consequential amendment. We have already accepted the definition of Scheduled Caste elsewhere and the same thing will be introduced here.

The amendment was adopted.

Mr. President: I have put only the amendment to vote. The clause, as amended, is now put to vote.

The clause, as amended, was adopted.

The Honourable Sardar Vallabhbhai J. Patel:

"*Additional right to minorities.*—The members of a minority community who have reserved seats shall have the right to contest unreserved seats as well."

This is an item which was hotly contested in the Minority and the Advisory Committee and after a prolonged debate this proposition was passed. As this proposition has been passed at two places, I do not think it will be wise to open another debate on this question. After all after having a prolonged debate on this question it would be better to pass it as it is. I move this proposition for the acceptance of the House.

Seth Govind Das (C. P. and Berar: General): *[Mr. President, as Sardar Sahib has just stated there was a good deal of discussion between the minorities and Advisory Committees on clause 4. Afterwards there was a good deal of discussion among members themselves over this matter. So far as minorities are concerned, there are many minorities which in fact cannot be called as such. For instance take the case of Harijans. They are in fact Hindus; they are not a minority like the Muslims or the Christians. Therefore so far as Harijans are concerned they ought to be treated in one way and the other minorities should be treated in another way. Harijans have been very much suppressed. This is also a matter which is to be considered separately. In this connection, I want to say that if Sardar Sahib does not take the vote of the House today but postpones it for tomorrow, that will be more appropriate because even now there are many members who want to think over it and are discussing the matter amongst themselves. I desire that this matter be disposed of in such a manner as may give full satisfaction to all members of the House as well as to all minorities. And I do not think that it would be proper to put it to vote today. Therefore, I appeal to Sardar Sahib that he may postpone this matter till tomorrow. There are many other recommendations of this committee which can be considered today.]*

Mr. R. V. Dhulekar (U. P.: General): *[Mr. President, I also beg to request that, as this is a very complex issue, it may be postponed so as to enable us to give fuller consideration to it.]*

*[ ]*English translation of Hindustani speech.

Mr. President: A suggestion has been made that this item may be held over for consideration tomorrow.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I have already told the House that this question was debated in the Minority Committee as well as in the Advisory Committee and we had a very full debate. In spite of this, if our friends desire to postpone this question, I must resist it on the ground that I see no advantage. We had two full debates. I have said that after the debates the Resolution as is being moved was passed and no advantage is to be obtained by postponing this. I do not think that any debate would be useful. If I thought that there was any possibility of any advantage being gained, I would have agreed, but postponement would not help us at all. This has been passed in two committees not by a very narrow majority and therefore I do not see any advantage. I must say that postponement will simply mean waste of time. I therefore move that this be accepted.

Mr. President: In any case you have to rise at half past four. It automatically has to be postponed.

The Honourable Sardar Vallabhbhai J. Patel: We shall abide by the desire of the House and the ruling of the Chair, but if this is to be put to vote, it will be carried immediately.

Mr. President: But as certain Members have expressed a desire that there should be further discussion, I would not like to disappoint them. They wish to speak about it. We have got a meeting of the Cabinet and some of us have to go there at 5 o'clock. The House stands adjourned till 10 o'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Thursday the 28th August, 1947.

No. CA/24/Com./47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,
New Delhi, the 8th August 1947

FROM

THE HON'BLE SARDAR VALLABHBHAI 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 appointed by the Constituent Assembly on the 24th January 1947 and subsequently nominated by you, I have the honour to submit this report on minority rights. It should be treated as supplementary to the one forwarded to you with my letter No. CA/24/Com./47, dated the 23rd April 1947 and dealt with by the Assembly during the April session. That report dealt with justiciable fundamental rights ; these rights, whether applicable to all citizens generally or to members of minority communities in particular, offer a most valuable safeguard for minorities over a comprehensive field of social life. The present report deals with what may broadly be described as political safeguards of minorities and covers the following points :—

(*i*) Representation in legislatures ; joint *versus* separate electorates and weightage.

(*ii*) Reservation of seats for minorities in Cabinets.

(*iii*) Reservation for minorities in the Public Services.

(*iv*) Administrative machinery to ensure protection of minority rights.

2. Our recommendations are based on exhaustive discussion both in the Sub-Committee on Minorities as well as in the main Advisory Committee. From the very nature of things, it was difficult to expect complete unanimity on all points. I have pleasure in informing you, however, that our recommendations, where they were not unanimous, were taken by very large majorities composed substantially of members belonging to minority communities themselves.

Joint versus *separate electorates and weightage*

3. The first question we tackled was that of separate electorates ; we considered this as being of crucial importance both to the minorities themselves and to the political life of the country as a whole. By an overwhelming majority, we came to the conclusion that the system of separate electorates

must be abolished in the new constitution. In our judgment, this system has in the past sharpened communal differences to a dangerous extent and has proved one of the main stumbling blocks to the development of a healthy national life. It seems specially necessary to avoid these dangers in the new political conditions that have developed in the country and from this point of view the arguments against separate electorates seem to us absolutely decisive.

4. We recommend accordingly that all elections to the Central and Provincial legislatures should be held on the basis of joint electorates. In order that minorities may not feel apprehensive about the effect of a system of unrestricted joint electorates on the quantum of their representation in the legislature, we recommend as a general rule that seats for the different recognised minorities shall be reserved in the various legislatures on the basis of their population. This reservation should be initially for a period of 10 years, the position to be reconsidered at the end of that period. We recommend also that the members of a minority community who have reserved seats shall have the right to contest unreserved seats as well. As a matter of general principle, we are opposed to weightage for any minority community.

5. For two reasons the application of the above principles to specific minorities was considered in detail by the committee. In the first place, it was known to us that minorities are by no means unanimous as to the necessity, in their own interests, of statutory reservation of seats in the legislatures. Secondly, the strict application of the above principles to a microscopic minority like the Anglo-Indians seemed to require very careful examination. We accordingly classified minorities into three groups—group 'A' consisting of those with a population of less than 1/2 per cent. in the Indian Dominion excluding the States, group 'B' consisting of those with a population of more than 1/2 per cent. but not exceeding 1 1/2 per cent and group 'C' consisting of minorities with a population exceeding 1 1/2 per cent. These three groups are as follows :—

Group 'A'—

1. Anglo-Indians.
2. Parsees.
3. Plains' tribesmen in Assam.

Group 'B'—

4. Indian Christians.
5. Sikhs.

Group 'C'—

6. Muslims.
7. Scheduled Castes.

6. *Anglo-Indians.*—The population of the Anglo-Indian community excluding the States is just over a lakh, that is, ·04 per cent. Mr. Anthony, on behalf of the Anglo-Indians, contended that the census figures were inaccurate but even admitting a larger figure than the one given in the census, this community is microscopic, and to deal with it on a strictly population basis wou p

mean giving it no representation at all. The representatives of the Anglo-Indians on the committee asked originally that they should have the following representation in the legislatures :—

House of the People	3
West Bengal	3
Bombay	2
Madras	2
C.P. & Berar	1
Bihar	1
U.P.	1

Subsequently they asked that they should be guaranteed two seats in the House of the People and one in each province in which they have representation at present, that is, a total of 8 altogether. After very considerable discussion, in the course of which the representatives of the Anglo-Indian community gave full expression to their views, the committee unanimously accepted the following formula, namely, that there shall be no reservation of seats for the Anglo-Indians but the President of the Union and the Governors of Provinces shall have power to nominate representatives of the Anglo-Indian community to the lower house in the Centre and in the Provinces respectively if they fail to secure representation in the legislatures as a result of the general election. We wish to congratulate the representatives of the Anglo-Indian community on the committee for not pressing their proposals which would not merely have introduced the principle of special weightage which was turned down as a general proposition by an overwhelming majority but would also have encouraged other small minorities to ask for representation wholly out of proportion to their numbers. We feel sure that by the operation of the formula recommended by us Anglo-Indians will find themselves given adequate opportunity effectively to represent in the legislatures the special interests of their community.

7. *Parsees.*—In the Minorities Sub-Committee, Sir Homi Modi had urged that in view of the importance of the Parsee community and the contribution, it had been making to the political and economic advancement of the country, Parsees should have adequate representation in the Central and Provincial Legislatures. The Sub-Committee were of opinion that this claim should be conceded. In view, however, of the opinion expressed to him by several members that an advanced community like the Parsees would be adequately represented in any event and did not need specific reservation, Sir Homi had asked for time to consider the matter.

When the issue came before the Advisory Committee, Sir Homi stated that though the committee had already accepted the Parsee community as a recognised minority entitled to special consideration on the same basis as other minorities in Group A, he had decided to follow the traditions which the community had maintained in the past and to withdraw the claim for statutory reservation. He assumed that Parsees would remain on the list of recognised minorities and urged that if, during the period prescribed in the first instance for the special representation of the minorities it was found that the Parsee community had not secured proper representation, its claim would be reconsidered and adequate representation provided, if the separate representation

of minorities continued to be a feature of the constitution. The Committee appreciated the stand taken by Sir Homi and agreed to his proposal.

8. *Plains' tribesmen in Assam.*—The case of these tribesmen will be taken up after the report of the Excluded and Partially Excluded Areas Sub-Committee is received.

9. *Indian Christians.*—The representatives of the Indian Christians stated that, so far as their community was concerned, they did not desire to stand in the way of nation building. They were willing to accept reservation proportionate to their population in the Central Legislature and in the Provincial legislatures of Madras and Bombay. In the other provinces, they would have the liberty of seeking election from the general seat. They were against any weightage being given to any community, but made it plain that if weightage was given to any minority, in Groups ' B ' and ' C ', they would demand similar weightage. As weightage is not being conceded to any community, this means that the Indian Christians are prepared to throw in their lot with the general community subject only to the reservation of certain seats for them on the population basis in the Central legislature and in Madras and Bombay.

10. *Sikhs.*—In view of the uncertainty of the position of the Sikhs at present, pending the award of the Boundary Commission in the Punjab, the committee decided that the whole question of the safeguards for the Sikh community should be held over for the present.

11. *Group 'C'—Muslims and Scheduled Castes.*—The Committee came to the conclusion that there are no adequate grounds for departing from the general formula in the case either of the Muslims or of the Scheduled Castes. Accordingly it is recommended that seats be reserved for these communities in proportion to their population and that these seats shall be contested through joint electorates.

12. A proposal was made in the committee that a member of the minority comunity contesting a reserved seat should poll a minimum number of votes of his own community before he is declared elected. It was also suggested that cumulative voting should be permitted. The Committee was of the view that a combination of cumulative voting and a minimum percentage of votes to be polled in a community would have all the evil effects of separate electorates and that neither of these proposals should be accepted.

Representation of minorities in Cabinets

13. Some members of the committee proposed that there should be a Provision prescribing that minorities shall have reserved for them seats in Cabinets in proportion to their population. The committee came unhesitatingly to the conclusion that a constitutional provision of this character would give rise to serious difficulties. At the same time, the committee felt that the constitution should specifically draw the attention of the President of the Union and the Governors of Provinces to the desirability of including members of important minority communities in Cabinets as far as practicable. We recommend accordingly that a convention shall be provided in a schadule to the constitution on the lines of paragraph VII of the Instrument

of Instructions issued to Governors under the Act of 1935 and reproduced below:

> "VII. In making appointments to his Council of Ministers, our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers."

Representation in Services

14. A proposal was made to us that there should be a constitutional guarantee of representation in the public services of the minority communities in proportion to their population. We are not aware of any other constitution in which such a guarantee exists and, on merits, we consider, as a general proposition that any such guarantee would be a dangerous innovation. At the same time, it is clear to us that consistently with the need of efficiency in administration, it is necessary for the State to pay due regard to the claims of minorities in making appointments to public services. We recommend, therefore, that, as in the case of appointments to Cabinets, there should be in some part of the constitution or the schedule an exhortation to the Central and Provincial Governments to keep in view the claims of all the minorities in making appointments to public services consistently with the efficiency of administration.

The Anglo-Indian members of our committee have represented to us that owing to the complete dependence of the economy of their community on their position in certain services and their existing educational facilities, their case requires special treatment. We have appointed a sub-committee to investigate this question and to report to us.

15. The minorities' representatives in the committee naturally attached importance to the provision of administrative machinery for ensuring that the guarantees and safeguards provided for the minorities both in the constitution and by executive orders are in fact implemented in practice. After considerable discussion, we have come to the conclusion that the best arrangement would be for the Centre and for each of the Provinces to appoint a special Minority Officer whose duty will be to enquire into cases in which it is alleged that rights and safeguards have been infringed and to submit a report to the appropriate legislature.

16. We have felt bound to reject some of the proposals placed before us partly because, as in the case of reservation of seats in Cabinets, we felt that a rigid constitutional provision would have made parliamentary democracy unworkable and partly because, as in the case of the electoral arrangements we considered it necessary to harmonise the special claims of minorities with the development of a healthy national life. We wish to make it clear, however, that our general approach to the whole problem of minorities is that the State should be so run that they should stop feeling oppressed by the mere fact

that they are minorities and that, on the contrary, they should feel that they have as honourable a part to play in the national life as any other section of the community. In particular, we think it is a fundamental duty of the State to take special steps to bring up those minorities which are backward to the level of the general community. We recommend accordingly that a Statutory Commission should be set up to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they labour and to recommend to the Union or the Unit Government, as the case may be, the steps that should be taken to eliminate their difficulties and suggest the financial grants that should be given and the conditions that should be prescribed for such grants.

17. A summary of our recommendations is attached in the Appendix.

Yours truly,

The 8th August 1947.

VALLABHBHAI PATEL,
Chairman.

APPENDIX A

REPRESENTATION IN LEGISLATURES

1. *Electorates.*—All elections to the Central and Provincial Legislatures will be held on the basis of joint electorates:

Provided that as a general rule, there shall be reservation of seats for the minorities shown in the schedule in the various legislatures on the basis of their population.

Provided further that such reservation shall be for 10 years, the position to be reconsidered at the end of the period.

SCHEDULE

GROUP: A.—Population less than ½ per cent. in the Indian Dominion, omitting States.

1. Anglo-Indians.
2. Parsees.
3. Plains' tribesmen in Assam.

B.—Population not more than 1½ per cent.

4. Indian Christians.
5. Sikhs.

C.—Population exceeding 1½ per cent.

6. Muslims.
7. Scheduled Castes.

2. *Anglo-Indians.*—(*a*) There shall be no reservation of seats for the Anglo-Indians, but the President of the Union and the Governors of Provinces shall have power to nominate their representatives in the Centre and the Provinces respectively if they fail to secure adequate representation in the legislatures as a result of the general election.

Parsees.—(*b*) There shall be no statutory reservation in favour of the Parsee Community, but they would continue to remain on the list of recognized minorities:

Provided that if as a result of elections during the period prescribed in proviso 2 to para. 1 above it was found that the Parsee Community had not secured proper representation, their claim for reserved seats would be reconsidered and adequate representation provided should the separate representation of minorities continue to be a feature of the Constitution.

NOTE.—The above recommendations represent the view taken by the representatives of the Parsee community.

3. *Indian Christians.*—(*a*) There shall be reserved representation for Indian Christians in proportion to their population in the Central Legislature and in the Provincial Legislatures of Madras and Bombay. In other provinces, they will have the right to seek election from the general seats.

Sikhs.—(*b*) The question of minority rights for the Sikhs will be considered separately.

Muslims and Scheduled Castes.—(*c*) There shall be reservation of seats for the Muslims and Scheduled Castes in the Central and Provincial Legislatures on the basis of their population.

4. *Additional right to minorities.*—The members of a minority community who have reserved seats shall have the right to contest unreserved seats as well.

5. *No weightage.*—The minorities for whom representation has been reserved will be allotted seats on their population ratio, and there shall be no weightage for any community.

6. *No condition for a minimum number of votes of one's own community.* There shall be no stipulation that a minority candidate standing for election for a reserved seat shall poll a minimum number of votes of his own community before he is declared elected.

7. *Method of voting.*—There may be plural member constituencies but cumulating voting shall not be permissible.

REPRESENTATION OF MINORITIES IN CABINETS

8. *No reservation for minorities.*—(*a*) There shall be no statutory reservation of seats for the minorities in Cabinets but a convention on the lines of paragraph **VII of the Instrument of Instructions issued to Governors under the Government of India Act, 1935 shall be provided in a Schedule to the Constitution.

** VII. In making appointments to his Council of Ministers our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so actiong, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

RECRUITMENT IN SERVICES

9. *Due share to all minorities guaranteed.*—In the all-India and Provincial Services, the claims of all the minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency of administration.

(NOTE.—Appropriate provision shall be embodied in the Constitution or a schedule thereto to this effect.)

10. *Position of Anglo-Indian community.*—Owing to the complete dependence of the economy of the Anglo-Indian community on their position in certain services and their existing educational facilities, a sub-committee consisting of the following members has been appointed to submit a report:

1. Pandit G. B. Pant.
2. Mr. K. M. Munshi.
3. Mrs. Hansa Mehta.
4. Mr. S. H. Prater, and
5. Mr. F. R. Anthony.

WORKING OF SAFEGUARDS

11. *Officer to be appointed.*—An Officer shall be appointed by the President at the Centre and by the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards provided for the minorities.

12. *Statutory Commission for backward classes.*—Provision shall also be made for the setting up of a Statutory Commission to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they labour and to recommend to the Union or the Unit-Government, as the case may be, the steps that should be taken to eliminate the difficulties and the financial grants that should be given and the conditions that should be prescribed for such grants.

APPENDIX 'B'

No. CA/60/Com./47

COUNCIL HOUSE,

New Delhi, the 25th August, 1947.

FROM

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

To

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

SIR,

I have the honour to refer to paragraph 14 of my letter No. CA/24/Com./47 dated the 8th August and to submit this supplementary report on the position of Anglo-Indians in certain services and the grant of special educational facilities for them. This report is based on a consideration of the findings of a sub-committee appointed by us.

2. (a) Position of Anglo-Indians in certain services:

We find that, as a result of historical circumstances the whole economy of this community is at present dependent on finding employment in certain types of posts in the Railways, the Posts and Telegraphs and the Customs Departments. A recent survey conducted by the Provincial Board for Anglo-Indian Education in Bombay showed that 76 per cent of the employable section of the community there were dependent for their livelihood on these appointments. We believe that the position is almost the same all over India; the total number of Anglo-Indians at present employed in these three departments being about 15,000. The special reservation given to them in the Government of India Act 1935 does not however extend to all the categories of posts in these departments, but only in those with which they have had long past associations. In view of this we feel that if the existing safeguards in this regard are not continued in some form for some years to come, the community will be subjected to a sudden economic strain which it may not be able to bear. We therefore recommend that:

(*i*) The present basis of recruitment of Anglo-Indians in the Railways, the Posts and Telegraphs and the Customs Departments shall continue unchanged for a period of two years after the coming into operation of the Federal constitution. After that, at intervals of every two years, the reserved vacancies shall be reduced each time by 10 per cent. This shall not however bar the recruitment of Anglo-Indians in the categories of posts in which at present they have reserved places *over and above* the prescribed quota of reserved appointments, if they are able to secure them on individual merit in open competition with other communities. It shall also in no way prejudice their recruitment on merit to posts in these departments, or any other in which they have not been given a reserved quota.

(*ii*) After a period of ten years from the date of the coming into operation of the Federal Constitution all such reservations shall cease.

(*iii*) In these services there shall be no reservation for any community after the lapse of 10 years.

(b) Special educational facilities for Anglo-Indians.

There are at present about 500 Anglo-Indian Schools in India. The total Government grant to these schools is about Rs. 45 lakhs being approximately 24 per cent of the expenditure incurred by the schools. We feel that a sudden reduction in the grant will seriously dislocate the economy of these schools; and that it would only be fair to bring them gradually into line with other similar educational institutions after giving them sufficient time and opportunity to adjust themselves to the altered conditions now prevailing in the country. We also feel that in this way these institutions might become a valuable educational asset which would cater to the growing educational needs of the whole nation and not only to those of the Anglo-Indian community. We accordingly recommend that:

(*i*) the present grants to Anglo-Indian education made by the Central and Provincial Governments should be continued unchanged for three years after the coming into operation of the Federal constitution.

(*ii*) After the expiry of the first three years, the grants may be reduced by 10 per cent and by a further 10 per cent after the 6th year, and again by a further 10 per cent after the ninth year. At the end of the period of 10 years, special concessions to Anglo-Indian schools shall cease.

(*iii*) During this 10 years period, 40 per cent of the vacancies in all such state aided Anglo-Indian schools shall be made available to members of other communities.

The term 'Anglo-Indian' used in this Report has the meaning given to it in the Government of India Act 1935.

Yours sincerely,
VALLABHBHAI PATEL

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2,500

Volume V
No. 9

Thursday
28th August
1947

CONSTITUENT ASSEMBLY DEBATES

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Price 5 Annas

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 28th August 1947

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

MEMBERS TAKING THE PLEDGE

The following Members took the pledge—

Professor N. G. Ranga.

Shri K. Kamaraja Nadar, M. L. A.

REPORT ON MINORITY RIGHTS

Mr. B. Das (Orissa: General): Sir, on a point of order. Yesterday the House passed Clause 1 (*a*) which was moved by Mr. K. M. Munshi to define the Scheduled Castes as part of the Hindu community. Sir, to that I moved an amendment.

Mr. President: I may tell you, Mr. Das, that we are not drafting the statute today. If there is anything which is not quite accurate in the description, the draftsman will put it right. So we need not worry about that. It is a purely technical matter.

Mr. B. Das: Schedule I does not exist from 15th August. It has been omitted in the Adaptation Act (The India Provisional Constitution) Order, 1947.

Mr. President: Even if it does not exist, I think the draftsman will understand what is meant.

Shri Gopikrishna Vijayavargiya (Gwalior State): Sir, Members from Bengal feel that if right to contest additional seats to minorities is given in Western Bengal it will infringe the position there, and disturb the whole proportion. I request that question may be deferred for later consideration.

Maulana Hasrat Mohani (United Provinces: Muslim): May I know how, at this time when members of the Congress High Command and members of the minorities talk of the Minorities' Report, they always mean by minority Muslims only? I refuse to accept Muslims to be a minority. Now you say you have done away with this communalism. Are we not calling a minority to refer only to Muslims?

Mr. President: I am afraid I have not followed what the Honourable Member is saying.

Maulana Hasrat Mohani: Sir, I did not take any part in the discussions about this Minority Report purposely. My idea was.....

Seth Govinddas (C. P. and Berar: General): Sir, may I know what item we are discussing?

Mr. President: There is no item under discussion; I thought the Maulana was raising a point of order. The Honourable Member should mention his point and then make his speech if necessary.

Maulana Hasrat Mohani: Sir, I have got a very fundamental objection to this Minority Report. How is it that when you talk of minorities you mean Muslims only and when you talk of reservation you refer to Muslims only?

Mr. President: I am afraid I cannot allow the Honourable Member to speak at random because there is nothing that we are discussing at this stage.

Maulana Hasrat Mohani: I am saying that, when we talk of minorities how is it that Muslims only are referred to as a religious minority? The Muslims refuse to be called a minority, if parties are formed on political line.

Mr. President: I think the Honourable Member is discussing the merits of a matter which has already been discussed and passed.

Maulana Hasrat Mohani: That is what I wanted to say.

Mr. President: We were discussing Clause 4 of the Appendix yesterday and we will now take up the amendments.

Mr. Debi Prosad Khaitan (West Bengal: General): Sir, in connection with this I have an amendment, No. 44, which is related to paragraph 4 of the Report which is also clause 4 of the Appendix. If you allow me to move that at the proper time I shall be obliged. And if you wish me to move it now I am prepared to do it.

Mr. President: Yes, you can move it.

Shriyut Rohini Kumar Chaudhury (Assam: General): Sir, according to the order paper we should discuss the fundamental rights first and then take up the consideration of any other matter.

Mr. President: We are discussing this first.

Mr. Debi Prosad Khaitan: Sir, I move:

"That with reference to paragraph 4 this Assembly recommends that owing to the special situation of West Bengal any minority community which has reserved seats shall not have the right to contest unreserved seats."

I have collected certain figures which go to show that the aggregate population of scheduled castes and Muslims constitute about half of the total population. If to the figures that I have added together for Burdwan Division, Presidency Division and Jalpaiguri and Darjeeling districts, the figures of Murshidabad, Nadia and Dinajpur which have come over to West Bengal be added, the total figures of scheduled castes and Muslims will be still more adverse to the rest of the population. Therefore it will be very unjust and unfair if the communities for whom reservations have been made are allowed to contest still more seats out of the unreserved ones. It may be remembered that the general population apart from the scheduled castes.....

Mr. H. J. Khandekar (C. P. and Berar: General): Sir, on a point of order, we passed a clause yesterday to the effect that the scheduled castes are a part and parcel of the Hindu community and not a minority. So the present amendment and the Mover's speech making the scheduled castes a minority is, I think, out of order.

Mr. Debi Prosad Khaitan: I submit, Sir, that what I am referring to is communities or a section of a community for whom reservations have been made. Whether they are called minorities or a section of the Hindus, the position is not disturbed at all. I am not referring to scheduled castes as a recognised minority but as that section of the Hindu community for which reservation is made. Therefore I submit that I am not at all out of order.

The position is that the general population after taking into account the Scheduled castes and Muslims will be about half or just more than half. Further I intend to submit that the general population, after the Scheduled castes and Muslims have got their reserved seats, would like to give some seats to Indian Christians, Buddhists who are a large number in Bengal, and other communities to which some of the seats should more properly go than those communities who have already got reservation. I submit that this matter requires further consideration at our hands. So I am moving this amendment and I believe Mr. Munshi will make a recommendation that just as the case of East Punjab has been reserved for further consideration, the case of West Bengal in these circumstances should also be kept back for further consideration. I would be willing to accept that suggestion.

Sir, I move.

(Shri Mohanlal Saksena and Prof. Shibban Lal Saksena did not move their amendments.)

Mr. President: As this is the only amendment that is moved, the matter is now open for discussion.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, the amendment moved by my Honourable friend Mr. Khaitan was moved only with a view to state that the case of West Bengal may be considered afresh. And I understand that the Honourable Mover of the Report is going to accept it in that form only. The reason for this is that the figures for the new West Bengal that were placed before the mover of the Resolution were not accurate. At least there is some discussion as to whether the figures are accurate or inaccurate. If the figures are inaccurate then this question may require some kind of consideration later on. Then why precipitate a decision on the figures which are not correct? Therefore it is felt advisable to leave the case of West Bengal to be considered later on when all the figures have been properly collected. That is whole purpose of this amendment. It does not seek to make any change in the body of clause 4 so far as the whole of India is concerned; except that as the case of East Punjab for consideration has been accepted, that of West Bengal also may be considered afresh.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. President, Sir, I would like to say a few words in connection with the amendment which has been just moved. I want to tell this House and particularly my friends of the Scheduled Castes and other minorities that the object of this amendment is not to frustrate or to defeat the object which is embodied in the Minority Committee's Report. But the House should at the same time realise that the position of West Bengal and of East Punjab today is entirely different from that of the

[Pandit Lakshmi Kanta Maitra]

rest of India, as a result of the partition of the country and particularly after the Radcliffe Award which in many respects varies from the notional award. Most of the members from Bengal are not in a position to understand here and now what exactly has been the result and what West Bengal's population now consists of. If we compare the statements contained in the Radcliffe Award with what is stated here, we find considerable divergence in the matter of figures. Nobody knows exactly what is the population of West Bengal now under the Radcliffe Award. Therefore, instead of precipitating a decision just now, we may stay our hands for the present, so that when we are in full possession of the statistical data with regard to the newly formed provinces of West Bengal and East Punjab, we may be in a position to decide their case in a proper manner. The House has already accepted this suggestion in the case of East Punjab. We now submit that the House will bear with us, and that the case of West Bengal also may be fully and carefully considered with all the available data that may be in our possession within a few days. I may tell the House that the Radcliffe Award is so illogical and arbitrary that in some cases the domestic households of persons have been in the Indian Union while their arable lands are in Pakistan. So we are not in a position to know what area is meant when we simply see the word Pakistan or Indian Union mentioned. We do not know what portion is in Pakistan and what portion is in Hindustan, and what is the relative population in either part. With all these considerations in view, we have now come to the conclusion that for doing justice for all parties concerned, the question of West Bengal should stand over for the present. This is all that is demanded in the present motion. There is no idea of going behind the principle that we have accepted. With these few words I support the amendment.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I do not here want to say anything on this delicate question that may raise any controversy. I only desire to draw the attention of the House to certain aspects of the matter, and I hope the Honourable the Mover of the Report will kindly consider them; but whatever the decision of this House may be, it will be loyally and cheerfully accepted.

Sir, the effect of this amendment would be that in West Bengal some minorities, excluding the Scheduled Castes who have now been treated as a separate class, feel that they would lose the sentimental right or advantage of contesting the unreserved seats. The principal object, so far as I can see, in providing for the right of the minorities to contest unreserved seats seems to be to induce them to give up their privileges of reservation of seats, as quickly as possible. In fact, if there was no reservation, the position would be that they may get more seats in certain constituencies than otherwise but only if the majority community favours them. This is thus an inducement thrown out to the minorities to give up their claim for reservation. In fact, the Hindus being in a great majority in West Bengal, they would have had the choice of electing an additional member of the minority group to the unreserved seat. It would be entirely in their hands. So the amendment would seek to deprive the situation of that condition. I

submit that it would be better to keep the original paragraph as it stands rather than to accept this amendment. But I make my submission with regard to this only to request Honourable Sardar Patel to consider the same.

With regard to the minorities, the Scheduled Castes as I pointed out a moment ago now form a different class altogether. Practically the only minority that remains and that will be affected by the amendment will be the Muslim community. If the Hindus would cheerfully elect a Muslim to an additional seat, that would be entirely for them to say; and if they think that a particular Muslim for nationalistic reasons or for reasons of efficiency etc., if they think that they should elect him, that is their business. If they think that they would not elect an additional Muslim to an unreserved seat, they can always do so. But I think the right of the electorate should be left absolutely untouched and a legislative prohibition should not be introduced. It is on grounds of high policy that I speak and not on narrow grounds of getting or losing one or two seats. One or two seats would not matter. What matters is the sentimental gesture to the minorities. This is a situation which deserves very careful consideration from the point of view of long-range politics.

Shri Upendra Nath Barman (West Bengal, General): Mr. President, Sir, I had no intention to oppose this motion, but I have to stand up today before this House because of some observations made by the Mover of the Resolution in the course of which he insinuated that after the Radcliffe Award and the partition of Bengal, West Bengal will have almost 50 per cent or exactly 50 per cent of population within the Scheduled and Muslim communities, and therefore he wants to defer this matter and appoint a Committee. My submission is that this is a reflection upon the Scheduled Castes which we all have been trying for so long to shake off altogether. I submit that we, the Scheduled Castes, have joined whole-heartedly in this constitution-making not only from outside but as members of the Congress, because we know that whatever may be our shortcomings during this period of our dependence, whatever crimes we may have imbibed during our unfortunate period, there had been born men amongst us, specially of Bengal I can say, like Vivekananda and Rabindranath Tagore who inspired in us the faith and hope of rejuvenation of India. Now, during the course of my taking part in this Constituent Assembly and the various Committees, I am confirmed in my belief that after all the genius of India has not forsaken her in her hour of need. We have complete faith in the sagacity of the majority community, for the time being I call them.

Sir, this independence has been won by the Congress with the help of those who had the keenest of vision, the highest of wisdom, the straightest of limb and the staunchest of spirit. We have full faith in their impartiality when they take the reins of office in their own hands, and we have full faith that they will amply discharge their duty of enlivening India, of lifting her to the standard of such a height that she might take her rightful place among the comity of nations. But at such a time, unfortunately one of my friends from Bengal speaks and speaks in such a way that it pains us. So I have the painful duty to remind him that this is not the way to gain faith. After all, Sir,

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what are you going to do? I have no objection to putting off this matter to a later date to consider the whole position of West Bengal. I have no doubt that this Assembly on whom rests so much responsibility will come to the same decision as we are going to adopt, perhaps according to the decision of the minority committee. But still some friends from Bengal think that their decision should be reconsidered. I have no objection to that. After all, after this Radcliffe Award and the division of Bengal, the Muslims have got a minority; there can be absolutely no doubt about it. I do not worry for a moment about any seat outside the reserved quota because I know full well that even in the reserved quota the minority will have to depend upon the majority votes, *i.e.*, the Caste Hindus. Our revered leaders have told us time and again that this blot within the Hindu community, the Scheduled Castes, must go so that we can rise as a nation. I fully endorse that view. But, my submission is that in the interim period, so long as this distinction remains, the Scheduled Castes will depend upon the majority community. So if in any case outside the reserve quota, any Scheduled Caste member or a Muslim member, so to speak, wants to contest a seat, he will have to depend upon the sympathy and faith of the bigger community. So from my point of view, I do not worry at all whether outside the reserve seats any seat be allowed to be contested by the Scheduled Castes, but as a matter of principle when you are going to accept the principle for the rest of the Provinces, do you mean to say that this august Assembly will make an exception in the case of Bengal or any particular province? I think not. However, I leave it to the House to defer this matter or not.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): Mr. President, Sir, there is only one amendment to Clause 4. The members of the minority community have reserved seats and those who have reserved seats will have right to contest unreserved seats as well. The amendment moved today by Mr. Khaitan, which has been amended by Mr. Munshi, seeks that like the East Punjab the question of West Bengal be held over. There is no reason either for the Scheduled Caste people or other people to have any suspicion about it. When the East Punjab question will be examined, the West Bengal question will also be examined. Nothing will be done behind their back and nothing will be taken away without their consent or without their knowledge. It has still to be seen what the actual effect of the population and proportion will be. Therefore, when we have made the Schedule which we have passed for giving safeguards in connection with franchise and elections, we have fixed them on the basis of population and strength. If really the population is so much so far as any minority is concerned, that they need not have any such additional right to contest, if it is such as would affect the majorities seriously so as to reduce it to an ineffective majority, then it is a case for consideration. So if it is only suggested, as is suggested in the amendment, that this question be held over and be considered along with the question of East Punjab, then there is no need for any apprehension. There need be no doubt about the sincerity of the people who have given these concessions, and in substance they will stand by it. There-

fore, I have no hesitation in accepting the amendment and I move that clause 4 may be accepted.

Mr. President: There is only one amendment, the effect of which is that the question of West Bengal may be held over for consideration at a later date. The Mover has accepted it. Do I take it that the House accepts that suggestion?

Honourable Members: Yes.

Mr. President: Then, I put clause 4, as amended, to vote.

Clause 4, as amended, was adopted.

CLAUSE 5

The Honourable Sardar Vallabhbhai J. Patel: Clause 5—

"The minorities for whom representation has been reserved will be allotted seats on their population ratio, and there shall be no weightage for any community."

I don't think that there need be any debate on this question now as it has been fully discussed in the Press and also in the Committee and I don't think there will be anybody who will differ from it. Sir, I move this for the acceptance of the House.

Mr. President: There are two amendments to this. (Messrs. Tajamul Husain and H. J. Khandekar did not move their amendments.) I put the clause to vote.

Clause 5 was adopted.

CLAUSE 6

The Honourable Sardar Vallabhbhai J. Patel: For the subsequent clauses also there will be no amendments I suppose. Clause 6.

"No condition for a minimum number of votes of one's own community: 'There shall be no stipulation that a minority candidate standing for election for a reserved seat shall poll a minimum number of votes of his own community before he is declared elected.' "

This question has also been considered very often even in the past and it is another form of separate electorate being introduced and it has been considered and in view of the change in the situation there is no need for introducing any such thing. We have agreed no such reservation of percentage is necessary. Sir, I move the Clause for the acceptance of the House.

(Messrs. Tajamul Husain and V. C. Kesava Rao did not move their amendments.)

K. T. M. Ahmed Ibrahim Sahib Bahadur (Madras: Muslim): Amendment No. 4 was given notice of by Mr. Pocker Saheb and myself and it refers to this clause.

Mr. President: I will take it up later. Mr. Nagappa.

Shri S. Nagappa (Madras: General): Mr. Chairman, Sir, I want to bring to the notice of the House that in the case of Scheduled Classes before they are declared elected to the seats reserved for them, I would request that a certain percentage of the votes of that community the candidates must be able to poll. I know, Sir, that that gives a kind of prestige and leadership to the candidate who comes from that community. For instance today if we are elected to reserved seats,

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when there is agrarian trouble, when the Harijans and the agriculturists are at loggerheads and when we go and appeal to these people, these Harijans, they say "Get out man, you are the henchmen and show-boys of the Caste Hindus. You have sold our community and you have come here on their behalf in order to cut our throats. We don't accept you as our representative." Sir, in order to avoid that what I suggest is that a certain percentage of the Harijans must elect the candidate so that he may be able to tell them that he has the backing of some Harijans and he will have the prestige and voice as their representative. That prestige and voice he should have.

Mr. H. J. Khandekar: Is the Mover moving his amendment or is he making a speech? He must declare whether he is moving or not.

Mr. President: Are you moving the amendment or not?

Shri S. Nagappa: Yes, I am moving the amendment.

The Honourable Mr. B. G. Kher (Bombay: General) Yesterday the Honourable Member congratulated Sardar Patel for being firm and refusing to accept this. Now he is moving this amendment.

The Honourable Sardar Vallabhbhai J. Patel: He is moving it only to make a speech and then withdraw it. (Laughter).

Mr. President: Every member has a right to be inconsistent.

Shri S. Nagappa: Sir, I would explain how this does not amount to separate electorates.

Shri Mohan Lal Saksena (United Provinces: General): Let him move his amendment first, and then let him speak.

Mr. President: It makes no difference when he says he moves it. Mr. Nagappa, you please read out the amendment.

Shri S. Nagappa: The amendment is as follows:—

"That the following be added at the end of para. 6:—

'Provided that in the case of the Scheduled Castes, the candidate, before he is declared elected to the seat reserved for the Scheduled Castes, shall have secured not less than 35 per cent. of the votes polled by the Scheduled Castes in the election to the reserved seat'."

Now Sir, I would explain to you how it does not work out to separate electorates.

Mr. K. M. Munshi: Does the Honourable the Mover of the amendment wish to move the amendment or is he going to withdraw it?

Mr. President: He has said he wants to move it.

Shri S. Nagappa: For instance there are four candidates that are seeking election to the reserved seats. Now let us take it there are 100 Scheduled Caste votes and let us assume all the 100 Scheduled Caste voters come and vote. A gets 36 and B gets 33, this comes to 71. Only 29 is there for the other. Now you need not take that man at all into consideration who has polled only 29 per cent. Now again you need not have two elections. You can distribute two coloured papers to the voters, one white and the other coloured. The coloured paper is to be placed only for the Scheduled Caste candidate and if one gets more

than 35 per cent of the Scheduled Caste votes, or coloured votes, you need not take the other man into consideration at all.

Sir, even if he gets 36 per cent, but does not get the highest number of votes in the general election he should not be declared elected. As it is, if X gets 36 per cent of the votes of the community and Y gets only 35 per cent, if the former does not get the majority of votes of the other communities at the election, he is declared to be defeated and the latter, though he gets only lesser number of votes of his own community, is declared elected; if he gets more votes than X at the general elections, he is declared elected. After all the election is completely in the hands of the general constituency or community. According to the Poona Pact you have allowed four candidates to be elected at the primary elections. This means that a man who gets 25 per cent of the votes is declared elected to the panel where you have allowed cumulative voting. That is almost separate electorate. I do not want separate electorates. I know the evils of separate electorates. I am for joint electorates. But, while seeing that joint electorates are there, let us not put the Harijan representatives in disfavour with their community who, as it is, call them showboys of the general community. If a provision of the kind I am advocating is adopted, we can face the people of our community and tell them; "Look here, we have been elected also by a majority of 35 per cent of the members of our own community. We are not showboys". By my amendment I am only seeking to reduce the panel from four to two and providing for the election of the person who gets the majority of votes of the general community. I would request Members to think over it without prejudice.

I thank you, Sir, for giving me an opportunity to move my amendment.

K. T. M. Ahmed Ibrahim Sahib Bahadur: Mr. President, Sir, I move:

"That on a consideration of the Report of the Advisory Committee on minorities, fundamental rights, etc., on minority right this meeting of the Constituent Assembly resolves that in case the elections to the Central and Provincial Legislatures are to be held on the basis of joint electorates for all communities with reservation of sesta for minorities, the election should be held on the following basis.":—

I am not moving (a)—

"Out of the candidates who have secured at least 30 per cent. of the votes polled of their own community, the candidate who secures the highest number of votes polled on the joint electoral roll shall be declared elected. In case there is no candidate who has secured not less than 30 per cent. of the votes polled of his own community, then out of the two candidates who secures the highest number of votes of their own community, that candidate shall be declared elected who secures the highest number of votes of the total votes polled."

Mr. President, this amendment is intended to secure the fulfilment in a satisfactory manner of the object of the reservation of seats accorded to the minorities by clause 1. If a person is elected to the reserved seat by a constituency it will generally be presumed that that person represents the members of that community and that he would reflect the views and the opinions of that particular community in whose favour that seat has been reserved in that constituency. Now, Sir, for that person to represent in any adequate manner that particular community, he must command the confidence of that community.

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We want therefore that if he does not command the confidence of the majority of the community, he must have the confidence of at least 30 per cent. or even less of the voters of that community who went to the poll. This, you will concede, Sir, is a very reasonable request. It is a fundamental and vital right of every citizen in every form of democracy that his views and opinions must be given expression to on the floor of the legislatures of the country. How can any citizen be confident that his views will be adequately represented on the floor of the House if the person sent to the legislature does not have the confidence of at least a fair proportion of the members of the community, if not the majority of that community? You will also remember, Sir, that a provision of this nature was adopted by general agreement at the Third Unity Conference held at Allahabad in December 1932, i.e., as a result of the agreement reached between all the communities and parties in this land.

My amendment is only an adaptation of the agreement which was arrived at on that occasion. I wish to point out, Sir, that if there is no such provision, the person who is elected to the reserved seat cannot be expected to represent the views of the community in whose favour that seat has been reserved. It would be imposing on a community a person who has been virtually elected by another community to represent the community which has been given the benefit of reservation of seats, but has not been elected by it. Now it is too late in the day to contend that there are no minorities in this country and that there are no special interests of minorities to be safeguarded. The very appointment of the Advisory Committee on Fundamental Rights and on Minorities and the Minorities Sub-Committee presupposes the existence of minorities and their special interests. The Report also has proceeded on the assumption that there are certain interests of minorities to be protected. Therefore I say this House would not now take up the position that there are no minorities and there are no special interests to be provided for. Now, the issue as to how best to give protection to these minorities has to be considered. One of the chief problems of modern democracy is how best to temper the rigours of the majority in order that the minorities may be protected from such rigours.

Now, Sir, in this age the divine right of kings has given place to the divine right of the majority, as has been put by a jurist. Our aim must be how best to temper the rigours of the majority in order that the minorities may have confidence in the majority, and in the constitution framed by the majority and may work out the constitution with all sincerity and honesty of purpose. We are assembled here as citizens of the State to frame a constitution in such a manner as to assure all sections of the population of their rights and to infuse confidence in the minds of all the sections of the population that their rights will be safeguarded. This amendment does not go any further than this, that in respect of the election of all representatives who are expected to reflect the views of a particular minority or community at least a fair proportion of the voters of that particular minority or community should have voted for the said representatives. This is a very legitimate request, and by passing this amendment, Sir, we are not taking away the right of the majority to finally determine

the representative of the constituency. Therefore, Sir, I appeal to this House to dispose of this question, in the words of the Honourable Mover "in an atmosphere of friendliness". As the Honourable Mover rightly said "we must leave behind us the legacy of bitterness" and we must look at this question devoid of all passion. I am anxious Sir, that this mater should be considered in an atmosphere of extreme calm. Left to myself I would have wished that this Report on the Rights of Minorities was considered at a time when this country was free from all passion and the heat of the moment has subsided and died down, but unfortunately it has been taken up now. I appeal to you, following the appeal of the Honourable Mover, to consider this question in a dispassionate manner and not to import any heat. After all we request that the members of the minority community should be afforded the necessary facilities in order that the representatives elected in their name for the purpose of speaking on their behalf may have the confidence of a fair proportion of the voters. There is nothing antinational in it and there is nothing fundamentally wrong. On the other hand it would be granting one of the fundamental and vital rights of every citizen in any form of democracy that he should have the right to have his views represented in the parliament of the country by a person in whom he has got confidence and the members elected by the minority will after all be in a minority and the minority will not be able to dominate over the decisions of the majority in the legislature. The only purpose is that the views and opinions of the minorities and the other communities may be reflected on the floor of the House in a proper manner by a person in whom those communities have got confidence at least to a limited extent. This is the purpose of this amendment and I do not know how it will infringe on the rights of the majority or how it will convert the majority community into a minority in any manner. Well, Sir, for the successful working of any constitution, there must be confidence created in all sections of the population by the constitution framed. We desire that the independence that has been achieved—the new-born independence must be independence and freedom for all sections of the population anr this can be achieved only if the constitution to be framed by this House secures the freedom and independence of all sections of the people and infuses confidence in the minds of the members of all sections. My amendment is a step in that direction, and I submit this is the surest way to foster harmony, good-will. cordiality and amity between the various sections and communities. The pre-requisite for the creation of harmony and cordiality between the various sections of the population is the creation of confidence in the minds of the various sections of the population and therefore it is that I appeal to this House to remember that after all we want only that the representatives may be elected by a fair proportion of voters of the particular communities. Well, Sir, I would like to point out that the system of proportional representation by a single transferable vote is an accepted method of election in all democracies and this very House has accepted the said method in respect of certain elections to be held in pursuance of the constitution we are framing and this amendment

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is only an approach towards the system of proportional representation by single transferable vote and therefore, I hope, Sir, that this House will accept this amendment. I am glad that the same feeling was also expressed by my Honourable friend Mr. Nagappa on behalf of the Scheduled Castes. You will see that we are not actuated by any malice or ill-will against anyone, but we only desire that there should be confidence in the minds of the minorities that their views are properly represented in the legislature by persons in whom they have confidence and in whose election they have a reasonably fair voice. I commend my amendment for the acceptance of the House.

Shrimati Dakshayani Velayudan (Madras: General): Mr. President I find that for the Motion four Members have given their names and first comes the name of the Honourable Dr. B. R. Ambedkar. I am surprised to find that a Member who came in as a result of a joint electorate came forward to move this amendment whereas a Member who was all the while standing for separate electorates and for the so-called percentage is not to be seen in the House to-day. If there was any sincerity in moving this amendment we could have found the person who headed the list, and I do not know why another member took up that responsibility. There may be some reason behind the scene. The Mover of the amendment, Mr. Nagappa, said when they come to the Assemblies as a result of joint electorates they may not be coming with the votes of the community and so they are not entitled to represent the community. If Mr. Nagappa thinks that he has come here as a result of such an election, the wisest and the best thing that he ought to do would be to withdraw his candidature or his membership from this Assembly and the Provincial Assemblies (*Hear, hear*). If anybody thinks that he is unfit to speak for the community when he comes on the vote of the community or the vote of the people in general, the best way to do service to the community is to disappear from the scene and not to take part in any political activities whatsoever and I think Dr. Ambedkar was wise enough to be absent on the occasion because he knew that this is not going to be carried in the Assembly today or on any day. As the Chairman of the Minority Committee spoke yesterday these things were passed in the committee by majority of votes and, whatever reasons that he may bring forward here, it may not be carried out. So without wasting his time, he has gone for his work as he is engaged in Cabinet work. Somebody has come forward with an excuse that if this form of electorate exists, the real representatives of the people will not be able to come. If we analyse the demand for a percentage of the votes of the community, we will come to the conclusion that it is nothing but unadulterated separate electorate. (*Hear, hear*). I must ask the honourable members who moved the amendment whether they are giving any meaning to the votes that will be cast by the members of other communities. In practice, we have to take into account only the votes that will be cast by the community. If a candidate gets 34 per cent and another candidate 35 per cent of the votes of his community, if the first candidate gets 200 votes from the general public and the next candidate gets 100 votes from the general public, and if we take into account the percentage of votes cast by the community, certainly the second candidate should be elected. Then it comes to this that there will be no meaning to the

votes cast by other communities though it amounts to double the number of votes which the second candidate gets from the general people.

Then there is another reason for my opposing this amendment. Even if the Harijans are given this percentage of votes, and this kind of electorate system, the Harijans are not in a position to withstand the attractions that they will have to face at the time of elections. So many parties can set up candidates and they can purchase the Harijans and put up any candidate they desire, and any candidate can come up in the Assembly, and certainly he may not represent the community though he may get the percentage of votes that is desired by this system. As long as the Scheduled Castes, or the Harijans, or by whatever name they may be called, are economic slaves of other people, there is no meaning demanding either separate electorates or joint electorates or any other kind of electorates with this kind of percentage. (*Cheers*). Personally speaking, I am not in favour of any kind of reservation in any place whatsoever. (*Hear; Hear.*) Unfortunately, we had to accept all these things because the British Imperialism has left some marks on us and we are always feeling afraid of one another. So, we cannot do away with separate electorates. This joint electorate and reservation of seats also is a kind of separate electorates. But we have to put up with that evil because we think that it is a necessary evil. I wanted to oppose this amendment because it will be standing in our way and because when the system is put into actual working it will be standing in the way of Harijans getting a correct ideology. It is lack of correct ideology among Harijans that has led them to bring this sort of amendment here. If they think that they can better their lot by standing apart from the other communities, they are in the wrong. They can do better by joining with the majority community and not depending on the votes of their own community. I must assure the mover of the amendment that the Harijans are not going to gain anything if you get this sort of electorate system. So I oppose this amendment and I hope that nobody in this House will support the amendment. (*Cheers.*)

(Many Honourable Members rose to speak.)

Mr. President: I have got requests from a very large number of members to speak on this.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I should like to say a few words before the debate is carried on. Mr. Nagappa was allowed to move the amendment on condition that he will withdraw it. There is no use in carrying on the debate. He only wanted to show to his community that he has not sold himself away. If you take it seriously and give importance to this business, then it would show that there is some substance in it. Why do you want to waste the time of the House on it?

Mr. President: Is it necessary to carry on the debate about Mr. Nagappa's amendment?

Shri L. Krishnaswami Bharathi (Madras: General): That need not be taken seriously, Sir.

Many Honourable Members: Closure, closure.

Mr. President: No closure. There is the other amendment by Mr. Ibrahim.

(Kazi Syed Karimuddin rose to speak.)

Mr. President: Do you want to speak about it? We have dropped Mr. Nagappa's amendment at any rate.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Sir, I support the amendment of Mr. Ibrahim, and I have to say a few words. I have heard with great patience the admirable speech of Pandit Pant and Sardar Patel's spirited defence of joint electorates. My submission is that I do not agree that it is only due to the separate electorates that the present situation is created. I do not want to minimise the various factors which have led to the present situation; but on behalf of the Muslim League Party, Sir, I submit that we are equally determined to eradicate this evil from India and we will not leave any stone unturned in offering our hand of co-operation in this matter.

Mr. Ibrahim has moved an amendment, Sir, that there should be joint electorates with reservation of seats and that a member of a particular community should secure 33 per cent of the votes of his community. We cannot forget that there are misgivings. We cannot be blind to the present situation in the country. We all desire that it should not continue any more. But there are misgivings. There is mistrust and we have to move on very carefully and very calmly. This House has already decided on the abolition of separate electorates and we have to find out a formula that would satisfy the minorities. We must have the progress of the country in view also. The formula or amendment moved by Mr. Ibrahim lays down that there should be joint electorates. A candidate from a minority community will have to go with his cap in hand to beg the votes from other communities. Communalism will be gradually killed. Then he has to be a representative of his own community. For which purpose have you given reservation of seats? Reservation of seats is given for this purpose that he should represent a particular community.

An Honourable Member: No, Sir.

Kazi Syed Karimuddin: He should have the sentiments of his community in view, he should have the aspirations of his community before him. If a minimum number of votes from his community is not fixed and if he is not able to secure that, my submission is that it will be the position of a client engaging a pleader who will be opposed to the interests of his client. Even a man of straw, or even a false convert will be able to defeat a genuine or real member of a community. Therefore, my submission is that in the interests of the provision of reservation of seats, it is necessary for a particular period that we should give this minimum number of votes to a candidate of a particular community. I do not agree, Sir, that the mere introduction of joint electorates is a magic wand to do away with all these evils. The problem of the Scheduled Castes is over and above this joint electorate for centuries. There are many other considerations which have contributed to the present position. I make an earnest appeal that as you have made a generous gesture of giving reservation of seats, you should

also concede that for a particular period, the Muslim minority should be allowed to have a minimum number of votes from the community which will satisfy their political aspirations.

Mr. H. J. Khandekar: *[Mr. President, Sir, I stand to oppose the amendment which has been placed before you by my friend Mr. Nagappa. This amendment stands in the name of four members. The first name is that of Dr. Ambedkar, and you all know that from the time of the Second Round Table Conference till the Minority Sub-Committee of the Advisory Committee assembled, he relinquished the demand for joint-electorates and continued the demand for separate electorates. On the question of this demand his message to all Harijans of this country, who belonged to his party, went to the extent that they were not even Hindus, that they wished to live separately from the Hindus, that they wished to have a colony separate from the Hindus, that they were not within the fold of Hindu religion, and it was for this reason that they desired separate electorates. This thing has been going on in the country for the last fifteen years with the result that a sort of discord has been created between caste Hindus and Harijans of Dr. Ambedkar's party, and it has gone to the extent that Harijans of the Ambedkar Party do not wish to converse with Hindus. But I feel happy to state that when this matter relating to joint and separate electorates came up before the minority sub-committee, Dr. Ambedkar did not press the claim further but withdrew it on the ground that he had no argument in support of the principle.

For the last 15 years, I have listened with interest to the speeches of Dr. Ambedkar and read them in news-papers too, but there was no argument in them in support of the demand for separate electorates. In this way, as the demand did not stand to reason, he did not press it but withdrew it. It is a great victory for us. Having withdrawn the demand, separate electorate was thought of by which the plea for percentage could be pressed. Speaking plainly it means that he desires separate electorates in a different form. I may explain to you the effects of separate electorates in this country. It was because of Lord Morley Minto that Muslims got separate electorates, and the result was that our country was divided into two. The same separate electorates are being brought before us in the form of percentage. If this is accepted either for Harijans or for our Muslim brothers, then it would mean the fulfilment of what my friend Mr. Jinnah has always said "Muslims of India and Muslims of Pakistan"—which means the preparation for Pakistan within India. Much suffering has been caused already. India has been divided into two. Brother Muslims have got what they wanted and was for their benefit. Having got that, they should be good enough not to try to create Pakistan within India and should not bring an amendment of this sort in this House.

It has come to my notice that our Muslim brothers, who in this country are about 3 crores, have got and are going to get on the report of the Advisory Committee all the facilities which they should get.

*[English translation of Hindustani speech.

[Mr. H. J. Khandekar]

Even then they say that they should get percentage of votes in order to enable them to elect their representatives. Once again, my friend Mr. Nagappa too, who is an ally of Dr. Ambedkar and is dancing to his tune on some expectations, says the same thing, *i.e.*, that it is in this way alone that our true representatives will be chosen. I want to ask these brothers, what is the meaning of a true representative? I want to cite the example of this Assembly. If my friends are not true representatives of Harijans, if Kazis are not here as true representatives of Muslims then, what will happen to this Assembly? If these honest Muslim brothers shout "Jinnah Zindabad", we shout "Bharat-Mata-ki-jai" or other slogans and such sort of pin pricks continue, what will be the result? I would like to ask Mr. Nagappa and Kazi Sahib, who will suffer then, the majority or the minority? Any declaration of this sort is most improper and therefore I do not agree with the amendment of Mr. Nagappa.

The other thing which I have just pointed out is that this percentage of votes is through the medium of separate electorates. Even after the present amendment, a few more are coming before you (in support of the percentage of votes) which is in fact a child of separate electorates. It is improper to bring amendments of this kind within this House. It is merely wasting the time of the House. I wish to state that whatever has happened as a result of percentage of votes is before us. I am very sorry to say that the result of separate electorates and the Poona Pact has been that in Nagpur and in Bombay, there is considerable agitation today against the Hindus and there are differences between one caste and another. The Poona Pact provided for primary election and cumulative voting which indirectly meant separate electorate. Do Dr. Ambedkar and Mr. Nagappa want to aggravate or eliminate this mutual conflict? If they want to eliminate they should withdraw the amendment. If the tension between the caste Hindus and the Harijans is aggravated the latter would be the loser not the gainer. Because of this mentality of Dr. Ambedkar and Mr. Nagappa the Harijans will permanently remain Harijans and their position would gradually deteriorate. There are sub-castes within castes. There are several sub-castes among Harijans. In fact Harijans are not a part of any community but are spread throughout India in 132 sub-castes. If percentage of 35 is passed, the 3 per cent. "Chamars" who live in Nagpur will not come within the orbit of this election. If election is fought community-wise then "Mahars" who are 80 per cent. will get 35 per cent. votes. Therefore "Chamars", Bhangis and the other sub-castes will not be able to return their representatives in elections because they are in minority among Harijans. In that case only the 'Mahars', to which section Dr. Ambedkar and I belong and which has a predominating majority in Bombay and Nagpur, will capture all the seats of the Harijans in those provinces and other Harijans will get no seat at all.

Besides, I have to request Mr. Nagappa to withdraw the amendment, the reason being that contrary to his belief the percentage of votes is not in favour of Harijans. Harijans will not benefit by it, in

fact it would be very bad (for them). Today we have achieved freedom for this country. We the inhabitants of this country have become its masters. Under these circumstances, if we do not take the majority community into confidence, and if the majority community does not take us to its confidence, then the government of this country cannot go on. For preserving peace in the country I have to request Mr. Nagappa to kindly withdraw the amendment.

Friends, only a few days back we the Hindus, the Muslims, the Sikhs, the Christians, the Parsis and the Harijans all acclaimed with one voice that we are one nation. We all gave our respectful salute to this tricolour. It would be a pity, if today we put in this amendment which seeks separate electorates.]*

Shrimati Renuka Ray (West Bengal: General): Sir, I rise to oppose this last amendment. The report of the Advisory Committee shows very clearly that its authors have done their utmost to satisfy all elements in the country. In fact, Sir, if the report has erred it has erred in the direction of over-generosity to the so-called minorities. In order to allay suspicion and distrust and to come to an agreed solution it has given every consideration to those who are swayed by communal and religious considerations even to the sacrifice of national interests. After all, Sir, it is not a question of minorities and majorities on a religious basis that we should consider in a democratic secular State. We have agreed to the reservation of seats just for the time being for the next ten years to allow those who cannot think of themselves in terms of "Indians" to adjust themselves over this period. I am surprised that the Mover of this amendment should have persisted today in bringing it forward. After the stirring appeal that was made by Sardar Patel and the very cogent and comprehensive arguments put forward by Pandit Pant to show that separate electorates are not only discordant and jarring to national interests but against the interests of the very communities for which they are intended, I thought he would not have pressed this amendment.

It is a back door method of bringing in separate electorates, which the House did not accept yesterday. Sir, we have stood aside helplessly while artificially this problem of religious differences —an echo of medieval times, has been fostered and nurtured and enhanced by the method of political devices such as separate electorates in order to serve the interests of our alien rulers. Today we see as a result our country divided and provinces like my own dismembered. We see that many who have made sacrifices in the struggle for the freedom of India cannot be citizens of India today. We have learnt indeed a bitter lesson. We have submitted to all this so that at least in the rest of India that remains with us now we may go ahead in forming a democratic secular State without bringing in religion to cloud the issue. Religion is a personal matter. Religious differences might have been exploited as a political expedient by the British but there is no room for that in the India of today. Sir, the problem that faces us is not a problem of minorities or of majorities on a religious basis. The problem that faces us is the problem of the

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]* English translation of Hindustani speech.

[Shrimati Renuka Ray]

vast majority in the country irrespective of religion, the majority who today are surrounded by ignorance and ill-health, hunger and want. It is they who are the backward sections of the community and who are the majority at the same time. It is their problem that we have to take up. If we want to make the Objectives Resolution that this House has passed and the Fundamental Rights that have been laid down, a living reality, it is this problem that we have got to tackle. We cannot allow any subtle devices by the back door such as restricted separate electorates to side-track us now from the main issue. We cannot expect those who are backward to function and participate as citizens with equal rights unless we take steps to make them conscious of their rights. By all means let us do all that we can to help their development through every means in our power, and make such provision in the constitution. But a separatist tendency on the basis of religion is something that I do not think we can tolerate any longer. We have never stood nor do we stand today for Hindu domination; we do not want that Hindus as such as a religious community shall override any other interests. But we do want that India's interests shall be paramount, that the interests of no special community shall stand in the way, whether it is a majority or a minority religious community. Sir, I hope that this House will throw out this amendment and that we shall be able to go ahead until we are able to find a solution for the real problems that confront us, so that India can take her proper place in the comity of nations; so that in accordance with the cultural heritage which is ours, enriched by the variety of the cultures, that have found a home in this country, we will be enabled to play an effective part in the harmonious development of the world as a whole.

Mr. Naziruddin Ahmad: Sir, the amendment moved by Mr. Ibrahim has raised a little tempest in a teapot. I submit that it is better to look at it from a practical point of view. I admire the splendid idealism preached by the Honourable lady from West Bengal who spoke just now. I cannot aspire to be as eloquent and as persuasive as she can claim to be. But I think that though it is a good thing to be an idealist it is a useful thing to be a realist. I do not like the prevailing situation at all; I do not like that there should be any difference between the Hindus and the Muslims. I do not believe that the better classes have any differences in the higher walks of life. But after all our community consists of men who are not idealists; there are men who have a communal outlook. We find this exemplified in the elections. In municipal and other elections where joint electorates prevail, the voting, as is well known to those who have experience, has for long been carried on on communal lines. As I said before, I do not like this and no right-thinking man likes it. But the situation should be looked at, as I said, from a practical point of view and with a due sense of proportion. What is the percentage of the majority community in India? It is something like 75 and the percentage of Muslims would be about 25. In order to appreciate the enormous difference between the two I shall refer to a famous cartoon in a very well known paper here, where the attitude of the great Hindu community towards the Muslims in this House was depicted by the famous cartoonist Shankar.

He represents the great Hindu community as an elephant in a most affectionate mood and the elephant is holding in an affectionate embrace with his trunk the Muslim community—a weakling in the shape of our leader Chaudri Khaliquzzaman. That gives to my mind, from a cartoonist's point of view, of course, the sense of proportion in which the Muslim stands to the Hindus. What is after all the effect of this prayer—I do not call it a demand—put forth through this amendment? It is this that the Hindu community who can be collectively described as the elder brother has in a generous mood conceded for the period of ten years—I should consider that period quite sufficient—that they should get a reserved representation. It seems to me that it implies that the great Hindu community are willing for this period of ten years to listen to what difficulties and complaints, apart from the justice or otherwise of these complaints, of the Muslim community. The only effect of allowing certain Muslim members to come through these 30 per cent. limit would be this, that 25 per cent Muslims would come into the Legislature. What would the weakling younger brother represent to the elder brother the elephant? What would be the nature of his prayer? It will be an appeal. No danger or harm can follow from this in the period of ten years if the elder brother listens to the grievances of the younger brother. These grievances and difficulties may be unreal or exaggerated, they may be due more to fear and suspicion rather than to any real reasons, but what would be the effect, I ask in all humility, what fearful consequences would arise out of these? If there is any reason in the prayer, then the elder brother, the affectionate elephant will accept it, if there is none he will reject it. That is all that will happen. I do not think the fearful consequences that are confidently predicted would at all follow from the acceptance of this amendment. I again submit, Sir, this is just a prayer on behalf of the younger brother to the elder brother in the shape of this vast august Assembly.

But I know that the result is a foregone conclusion. This amendment and the speeches in support of it reminds me of the argument of a lawyer before a judge, with the knowledge that the judgment has already been written and awaits delivery after his argument is over. We all know the result of the voting that is going to follow. But I hope that if we lose the amendment, the younger brother does not lose the affection of the elder brother.

Mr. President: I have received a number of slips, from Members who want to speak and I also see a number of Members standing, but . . .

Honourable Members: Closure.

Mr. President: I too think that we have had enough discussion now and would therefore put the motion for closure. The question is:

That the question be now put.

The motion was adopted.

Mr. President: The Honourable Mover may reply now.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I am sorry to see that so much time has been taken on this amendment which I thought

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was going to be withdrawn and on which there would not be much debate. So far as the Scheduled Castes are concerned, I do not think very much has to be said on this amendment, because I got a representation from a large majority of the Scheduled Castes representatives in this House, except one or two or three, that they were all against this amendment (*Hear, Hear*), and Mr. Nagappa knew about it. But Mr. Nagappa wanted to move his amendment to fulfil a promise or undertaking or at least show his community that he was not purchased by the majority community! Well, he has done his job, but other people took him seriously and took a lot of time.

So far as the amendment moved by the representative of the Muslim League is concerned, I find that I was mistaken in my impression, and if I had believed this, I would certainly not have agreed to any reservation at all. (*Hear, Hear*). When I agreed to the reservation on the population basis, I thought that our friends of the Muslim League will see the reasonableness of our attitude and allow themselves to accommodate themselves to the changed conditions after the separation of the country. But I now find them adopting the same methods which were adopted when the separate electorates were first introduced in this country, and in spite of ample sweetness in the language used there is a full dose of poison in the method adopted. (*Hear, Hear.*) Therefore, I regret to say that if I lose the affection of the younger brother, I am prepared to lose it because the method he wants to adopt would bring about his death. I would rather lose his affection and keep him alive. If this amendment is lost, we will lose the affection of the younger brother, but I prefer the younger brother to live so that he may see the wisdom of the attitude of the elder brother and he may still learn to have affection for the elder brother.

Now, this formula has a history behind it and those who are in the Congress will be able to remember that history. In Congress history this is known as the Mohammad Ali Formula. Since the introduction of separate electorates in this land there were two parties amongst the Muslims. One was the Nationalist Muslims or the Congress Muslims and the other the Muslim League members, or the representatives of the Muslim League. There was considerable tension on this question and at one time there was a practical majority against this joint electorate. But a stage was reached when, as was pointed out by the Mover of this amendment in Allahabad a settlement was reached. Did we stand by that settlement? No. We now have got the division of the country. In order to prevent the separation of the country this formula was evolved by the nationalist Muslims, as a sort of half-way house, until the nation becomes one; we wished to drop it afterwards. But now the separation of the country is complete and you say, let us introduce it again and have another separation. I do not understand this method of affection. Therefore, although I would not have liked to say anything on this motion, I think it is better that we know our minds perfectly each other, so that we can understand where we stand. If the process that was adopted, which resulted in the separation of the country, is to be repeated, then I say: Those

who want that kind of thing have a place in Pakistan, not here (*Applause.*) Here, we are building a nation and we are laying the foundations of One Nation, and those who choose to divide again and sow the seeds of disruption will have no place, no quarter, here, and I must say that plainly enough. (*Hear, Hear.*) Now, if you think that reservation necessarily means this clause as you have suggested, I am prepared to withdraw the reservation for your own benefit. If you agree to that, I am prepared, and I am sure no one in this House will be against the withdrawal of the reservation if that is a satisfaction to you. (*Cheers.*) You cannot have it both ways. Therefore, my friends, you must change your attitude, adapt yourself to the changed conditions. And don't pretend to say "Oh, our affection is very great for you". We have seen your affection. Why talk of it? Let us forget the affection. Let us face the realities. Ask yourself whether you really want to stand here and co-operate with us or you want again to play disruptive tactics. Therefore when I appeal to you, I appeal to you to have a change in your heart, not a change in the tongue, because that won't pay here. Therefore, I still appeal to you: "Friends, reconsider your attitude and withdraw your amendment". Why go on saying "Oh, Muslims were not heard; Muslim amendment was not carried". If that is going to pay you, you are much mistaken, and I know how it cost me to protect the Muslim minorities here under the present condition and in the present atmosphere. Therefore, I suggest that you don't forget that the days in which the agitation of the type you carried on are closed and we begin a new chapter. Therefore, I once more appeal to you to forget the past. Forget what has happened. You have got what you wanted. You have got a separate State and remember, you are the people who were responsible for it, and not those who remain in Pakistan. You led the agitation. You got it. What is it that you want now? I don't understand. In the majority Hindu provinces you, the minorities, you led the agitation. You got the partition and now again you tell me and ask me to say for the purpose of securing the affection of the younger brother that I must agree to the same thing again, to divide the country again in the divided part. For God's sake, understand that we have also got some sense. Let us understand the thing clearly. Therefore, when I say we must forget the past, I say it sincerely. There will be no injustice done to you. There will be generosity towards you, but there must be reciprocity. If it is absent, then you take it from me that no soft words can conceal what is behind your words. Therefore, I plainly once more appeal to you strongly that let us forget and let us be one nation.

To the Scheduled Caste friends, I also appeal: "Let us forget what Dr. Ambedkar or his group have done. Let us forget what you did. You have very nearly escaped partition of the country again on your lines. You have seen the result of separate electorates in Bombay, that when the greatest benefactor of your community came to Bombay to stay in bhangi quarters, it was your people who tried to stone his quarters. What was it? It was again the result of this poison, and therefore I resist this only because I feel that the vast majority of the Hindu population wish you well. Without them where will you be?

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Therefore, secure their confidence and forget that you are a Scheduled Caste. I do not understand how Mr. Khandekar is a Scheduled Caste man. If he and I were to go outside India, nobody will find out whether he is a Scheduled Caste man or I am a Scheduled Caste man. There is no Scheduled Caste between us. So those representatives of the Scheduled Caste must know that the Scheduled Caste has to be effaced altogether from our society, and if it is to be effaced, those who have ceased to be untouchables and sit amongst us have to forget that they are untouchables or else if they carry this inferiority complex, they will not be able to serve their community. They will only be able to serve their community by feeling now that they are with us. They are no more Scheduled Castes and therefore they must change their manners and I appeal to them also to have no breach between them and the other group of Scheduled Castes. There are groups amongst themselves, but everyone tries according to his own light. We are now to begin again. So let us forget these sections and cross-sections and let us stand as one, and together.

Mr. President: I have first to put the amendment of Mr. Nagappa.

Shri S. Nagappa: I do not press my amendment. I withdraw it.

Mr. President: Does the House give him leave to withdraw his amendment?

Honourable Members: Yes.

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

Mr. President: Then there remains Ahmed Ibrahim Sahib Bahadur's amendment,—

"That on a consideration of the Report of the Advisory Committee on minorities, Fundamental rights, etc., on minority rights this meeting of the Constituent Assembly resolves that in case the elections to the Central and Provincial Legislatures are to be held on the basis of joint electorates for all communities with reservation of seats for minorities the election should be held on the following basis :—

'Out of the candidates who have secured at least 30 per cent. of the votes polled of their own community, the candidate who secures the highest number of votes polled on the joint electoral roll shall be declared elected. In case there is no candidate who has secured not less than 30 per cent. of the votes polled of his own community, then out of the two candidates who secures the highest number of votes of their own community, that candidate shall be declared elected who secures the highest number of votes of the total votes polled."

The amendment was negatived.

Mr. President: I now put the original clause 6.

Clause 6 was adopted.

CLAUSE 7

Mr. President: We shall now take up Clause 7.

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

"7. *Method of voting.*—There may be plural constituencies but cumulative voting shall not be permissible."

There is an amendment that instead of putting this motion in a negative form as it now stands, it should be put in a positive form that "there shall be distributive voting". That amendment will be

moved formally and I propose to accept it. I suggest to the Honourable Members of this House, however, that we have to finish this Report before we rise today and therefore as this Report has been thoroughly discussed and main points have been passed, I hope on the amendments, if any, there will not be long speeches and we shall not waste time. I move the clause for the acceptance of the House.

Mr. President: There are two amendments, one by Mr. Kesava Rao and another by Mr. Mallick.

(Mr. Kesava Rao and Mr. M. B. Mallick did not move their amendments.)

Shri K. Santhanam (Madras: General): Sir, I seek your permission to move only part (2) of my amendment. I don't want to move Part (1). My amendment is:

"That the voting shall be distributive, that is, each voter will have as many votes as there are members and he should give only one vote to a candidate."

This amendment is necessary because I want to get the maximum advantage out of the joint electorates which we have adopted. Unless each candidate has to know every section of the electorates and is not able to confine himself to a particular section, the evil spirit of separate electorate will be retained. The result of my amendment will be, if there is a Scheduled Caste candidate he will not be able to say 'I want to accumulate only the Schedule Caste Votes' and a Christian candidate will not be able to say 'I want to accumulate the Christian votes only'. Everyone will have to seek every vote from every section, and therefore without any further elaboration, I propose my amendment.

Mr. President: Does anyone wish to say anything?

Shri D. H. Chandrasekharaiya (Mysore State): President, Sir, the amendment standing in my name runs as follows:

"(i) That provision be made for conducting all elections on the system of proportional representation by single transferable vote.

(ii) That if the above system is not adopted, then the system of single non transferable vote be provided for."

In para. 12 of the Report corresponding to para. 7 of the Appendix it has been stated that the system of cumulative voting should not be permitted in the elections to the Central and Provincial Legislatures. But as already admitted by Sardar Patelji no definite suggestion has been put forward in the report about the actual method of voting to be adopted. To put over this lacuna an amendment has been moved by Shri K. Santhanam urging the adoption of what is called the compulsory distributive voting system in all elections, under the new Constitution. Sir, before speaking upon my own amendment, I should like to say a few words regarding the method that has been suggested. This method which is also called the Block vote permits each voter to have as many votes as there are seats to be filled but he is compelled to give only one vote to a candidate. This is a system which is in vogue in some countries of the World, but its working has brought to light several drawbacks in it and therefore the opposition of political

[Shri D. H. Chandrasekharaiya]

thinkers and statesmen is steadily increasing towards it as we see from their writings. Under this system it is only a majority party that will secure full success in elections. I shall take an instance to make my point clear. Supposing there is an electorate consisting of 100 votes, then a party that commands 51 votes will sweep the polls and any other party having even 49 votes will go to the wall. This system will thus make room only for the success of one party and a legislature formed with only one party can never be said to be national in character or representing all important interests and elements in the country. Modern democracy, as we all know, is generally a representative democracy which means that our legislatures should properly and fully reflect the public opinion of the country. Therefore the method that has been proposed is open to serious objections.

With a view to avoid the defects of this system, it is very necessary to adopt, some form of proportional representation either the system of single transferable vote or the system of single non-transferable vote. I will not go into the details of these systems but both of them are scientific and elastic and give representation to majorities and minorities exactly in proportion to this voting strengths. When I say minorities I do not mean merely communal minorities. In fact I personally feel that the sooner this communalism goes out of politics the better it is for our country. But so long as communal minorities exist they will also take advantage of the system that I am proposing. The minorities that I have more particularly in view are these based on political considerations or economic ideologies or even territorial differences. I am inclined to think that this subject of method of voting should have more appropriately come in the report of the Union Constitution Committee than in the Report on the rights of Minorities, as it is a general subject relating to the form of representation in Legislatures. Whatever may be the nature of a minority, it ought to find a place in the Legislature adequately. This system is in vogue in several countries of the World. For instance in England some members of the British Parliament are chosen from certain Universities on the principle of proportional representation. In Northern Ireland members are chosen to both the Houses of Legislature only on the basis of this system. In South Africa the Senatorial elections are conducted in accordance with this system. In India we are familiar with this system in connection with some elections and I am told that the members of this House were elected from Provincial Legislatures in accordance with the principle of proportional representation by single transferable vote. Therefore a system which is fair and just to all, gives representation to all majorities and minorities in proportion to their respective voting strengths and makes the legislature thoroughly representative of all national interests is certainly worth having. The only objection to it may perhaps be that it is a little complicated system. As we are now trying big experiments in democracy, I think that no difficulty should be considered as too great for us to solve. In our country 90 per cent. of the population is illiterate, nevertheless elections are being held and political institutions are being run without any serious difficulties. Similarly I feel that the system of proportional

representation can get on very well notwithstanding the illiteracy of the masses.

If for any reason the system of single transferable vote is considered to be unsuitable, then the other system of non-transferable vote which is simple enough may be tried. According to it, each voter is entitled to cast one vote whatever may be the number of seats to be filled. The result is that in a constituency consisting of 500 voters, only 500 votes will be polled and no more. This method is less complicated, more simple and well suited to the circumstances of our country. It will avoid all the drawbacks and defects associated with the block vote system. I do not want to take any more time of the House, in view of the suggestion made to shorten our speeches as much as possible. Therefore, in order to make our legislatures truly democratic and representative of all important elements and interests in the country, I commend my motion to the kind acceptance of the House.

Shri Ajit Prasad Jain (United Provinces: General): *[Sir, the purport of most of the resolutions which have been moved during the last two or three days, is that some alteration be effected in the joint election (*i.e.*, the system of joint-electorates which is before the House at the moment for consideration).

The meaning of the present resolution is also the same. In elections by means of a single transferable vote, small groups acquire the authority to send their elected representatives. Past experience has shown that whenever the system of proportional representation by single transferable vote was adopted, even a few individuals could send their representatives. Wherever Muslims or members of Scheduled castes or other small minorities exist, they can have the authority, under this system, to elect their own representatives, by means of their own votes exclusively. On the contrary, the system of joint election is a democratic system. Its significance is to enable the largest possible number of persons to take part in the election of a candidate so that if some candidate be a Muslim then in his election both Hindus and Muslims may be able to participate, and if he be a Hindu then also, both Hindus and Muslims may be able to take part in it. But proportional representation is spoilt by the single transferable vote because there a few Hindus and Muslims can separately elect their representatives, thereby defeating the purpose of joint election.

The second part of this amendment is to the effect that a voter should have only one vote irrespective of the number of candidaets. This also means that Muslims or members of scheduled castes are entitled to elect their own representatives. Therefore, the net result of both these amendments will be that although effort is being made to remove the defects of separate elections, they will reappear in a different form and the result of that will be that the minorities, *i.e.*, Scheduled castes or Muslims or other minorities, will have an opportunity to their elections by appealing to communal sentiments of their people, and thus the decision to create a (proper) atmosphere by means of joint elections, will not materialise in the near future.

*[English translation of Hindustani speech.

[Shri Ajit Prasad Jain]

Therefore, I think that this amendment is one which will again create division and disturbances in the country, one which contains the fearful possibility of spreading factional and communal sentiment. I oppose this amendment which the Honourable member has just moved because I fear that it will create obstacles in our way and in the task before us.]*

The Honourable Sardar Vallabhbhai J. Patel: Now, I do not think I need say anything. The amendment which has been moved by Mr. Santhanam I propose to accept. The other amendment that has been moved does not suit our conditions, because we are now going to make an experiment of having elections by adult franchise which will bring on the rolls millions of ignorant voters. That being the case, the complicated system that has been suggested will be absolutely unsuited to us. Therefore I do not propose to accept it. I oppose it and move the adoption of the paragraph.

Mr. President: The amendment of Mr. Santhanam that has been accepted is this:

"That the voting shall be distributive, that is, each voter will have as many votes as there are members and he should give only one vote to a candidate."

I take it, it is in substitution of.....

Shri K. Santhanam: Of the latter part regarding cumulative voting.

Mr. President: The amended paragraph 7 is now to be voted upon. The question is:

"There may be plural member constituencies, but the voting shall be distributive, that is, each voter will have as many votes as there are members and he should give only one vote to a candidate."

The motion was adopted.

CLAUSE 8

The Honourable Sardar Vallabhbhai J. Patel: This item refers to representation in the Cabinets. I move—

"8. *No reservation for minorities.*—(a) There shall be no statutory reservation of seats for the minorities in Cabinets but a convention on the lines of paragraph VII of the Instrument of Instructions issued to Governors under the Government of India Act, 1935 shall be provided in a Schedule to the Constitution."

This was accepted unanimously in the Advisory Committee by all the minorities and the representatives of the majority communities. I hope the House will accept it. This is exactly a copy of the present provision in the Government of India Act, 1935.

(Messrs. Tajamul Husain, S. Nagappa, and V. I. Muniswami Pillai did not move their amendments.)

Shri D. H. Chandrasekharaiya: Mr. President, Sir, the amendment which I wish to move runs as follows:—

"That para. VII of the Instrument of Instructions issued to the Governors of Provinces under the Government of India Act, 1935, and proposed to be followed now be amended so as to provide for representatives of acceding States being selected to the Council of Ministers among others."

In connection with the communal minorities it is proposed to follow the convention expressed in para 7 of the Instrument of Instruc-

[ ] English translation of Hindustani speech.

tions. As I said in another connection I have in view not merely the minorities of a communal or religious character but also based on other considerations.

Mr. K. M. Munshi: I rise to a point of order. This is a Minority Committee's report and we are only dealing with minorities and not States.

The Honourable Sardar Vallabhbhai J. Patel: The States are in a majority. There are 500 States and we are only one State!

Shri D. H. Chandrasekharaiya: Regarding the point of order may I say a word? The report of the committee on minorities does not state what kinds of minorities are dealt with under it. It may refer to any kind of minority.

The Honourable Sardar Vallabhbhai J. Patel: You are in a majority.

Mr. President: Really you cannot bring the States as a minority. Minority ordinarily refers to communal minority or cultural minority or racial minority.

Shri D. H. Chandrasekharaiya: If this report refers only to communal minorities, then I have nothing more to say.

Mr. President: The whole thing is in reference to minorities and this you will find in the Schedule. Apart from the communal minorities referred to in the report, there is no question of other minorities.

Maulana Hasrat Mohani: You are thinking of your population ratio. This means that we are thinking in terms of communities and nations. Can't you refer to any political party? Therefore, I raise the objection that the whole of this Minority Report is based on a very fundamentally wrong principle. It must refer to political parties and not to parties on the basis of religion. The whole thing is absurd. You are wasting your time and energy in passing all these amendments. I will raise this objection when you put this final report to the House. Sir, I say the whole thing is absurd and is a huge humbug.

The Honourable Sardar Vallabhbhai J. Patel: There is no amendment to this clause and I have not followed Mr. Hasrat Mohani. Therefore I do not propose to reply.

Mr. M. S. Aney (Deccan States): I would request you, Sir, to call upon the Honourable Member to withdraw the word 'humbug'. It is an insult to this House. It is quite unparliamentary.

Mr. President: Did you use the words 'huge humbug'?

Maulana Hasrat Mohani: Yes: I said it is a huge humbug.

Mr. President: You withdraw that. I will now put clause 8 to vote.

Clause 8 was adopted.

CLAUSE 9

The Honourable Sardar Vallabhbhai J. Patel:

"9. *Due share to all minorities guaranteed.*—In the all-India and Provincial Services, the claims of all the minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency of administration."

This clause is framed with a view to see that the minorities are properly represented in the Services but it will also see that the efficiency of the administration is not affected. Keeping that point in

[The Honourable Sardar Vallabhbhai J. Patel]

view the State will also see that the minorities have due representation. I move this proposition for the acceptance of the House.

(Mr. Tajamul Husain did not move his amendment.)

Shri Mahavir Tyagi (United Provinces: General): Sir, my amendment is very innocent and innocuous. I only beg to request the House to drop the word "guaranteed" in the beginning of the sentence. It would assure guarantee to all minorities.

Mr. N. Gopalaswami Ayyangar (Madras: General): I rise to a point of order, Sir. This amendment relates only to the marginal note. We do not usually propose amendments to marginal notes.

The Honourable Sardar Vallabhbhai J. Patel: This amendment has nothing to do with the proposition.

Shri Mahavir Tyagi: The word is objectionable because in paragraph 14 of the Report it is said "a proposal was made to us that there should be a constitutional guarantee of representation in the public services of the minority communities in proportion to their population. We are not aware of any other constitution in which such a guarantee exists." The word 'guaranteed' was objected to their and now it has somehow or other crept in here. It was better if we had removed this word from even the heading of this section.

Mr. President: It may be left out from the heading which will read there—"Due share to all minorities."—That will be quite enough.

Shri Mahavir Tyagi: I will be satisfied if the word 'guaranteed' does not exist there.

The Honourable Sardar Vallabhbhai J. Patel: It does not exist for me.

Shri Mahavir Tyagi: I hope it will not exist for others too. I would rather not press my amendment.

(Messrs. P. Kakkan, and Upendranath Burman did not move their amendments.)

Shri Chandrika Ram (Bihar: General): I want to say a few words. I do not want to move, but while withdrawing the amendment that stands in my name, I wish to say a few words.

Mr. President: The question of withdrawing does not arise because your amendment has not been moved, but if you wish to say anything, I do not mind, but be short.

Shri Chandrika Ram (Bihar: General): *[Sir, in the beginning when this matter was decided, there was a good deal of discussion in the Advisory Committee. We felt that we should be given reservation in Provincial Services. After discussing it amongst ourselves, some of our Honourable Members suggested that we might discuss it with the Sardar, in view of the note underneath the main item. Therefore we thought it proper that there should be some statutory provision in the Provincial Services. We do not require (any such provision) in the central, because in the central services our position is satisfactory even today. But so far as provinces are concerned our claims have been ignored. For example, we know that in the U. P. we number more than 25 per cent. but from news-papers and other reports we gather that the seats

reserved for us are only 10 per cent. In the provincial services, we have been ignored, and we desire an assistance from Sardar Sahib, that just as he is advocating for the centre, similarly in the provinces, as well, services be given on population basis, because spending money on education does not mean that we should be denied our due share in services. This is a very important matter. I do not insist on moving this amendment. But I desire an assurance from the Sardar who is the mover of this clause that there will be full protection and that what is contained in this clause will find a place somewhere in the constitution.

With these few words, I withdraw this amendment.]*

Mr. President: There is no amendment to this. There is only the question put by Mr. Chandrika Ram.

The Honourable Sardar Vallabhbhai J. Patel: Mr. Chandrika Ram only wants some sort of assurance. I can only give the assurance that if this Minorities Committee Report is passed, everything will be all right for the minorities.

Mr. President: I put clause 9 to vote.

Clause 9 was adopted.

CLAUSE 10

Mr. President: Now, we go to clause 10.

The Honourable Sardar Vallabhbhai J. Patel: In this clause you will see that the Advisory Committee appointed a Sub Committee for the consideration of certain concessions which were enjoyed by the Anglo-Indian Community. The Committee, the members of which are mentioned here, made a unanimous* Report and I wish to draw your attention to the report of that Committee, and I shall move the recommendations of that Committee as the motion. You will see paragraph 2 has an introductory part giving the historical background of these concessions, and clause (1) is the real motion. The motion begins from clause (i)—

"(i) The present basis of recruitment of Anglo-Indians in the Railways, the Posts and Telegraphs and the Customs Departments shall continue unchanged for a period of two years after the coming into operation of the Federal constitution. After that, at intervals of every two years, the reserved vacancies shall be reduced each time by 10 per cent. This shall not however bar the recruitment of Anglo-Indians in the categories over and above the prescribed quota of reserved appointments, if they are able to secure them on individual merit in open competition with other communities. It shall also in no way prejudice their recruitment on merit to posts in these departments, or any other in which they have not been given a reserved quota.

(ii) After a period of ten years from the date of the coming into operation of the Federal constitution all such reservations shall cease.

(iii) In these services there shall be no reservation for any community after the lapse of ten years."

This is the first part of the motion. The other part refers to educational facilities. I shall move this first. I want to inform the House that this is a sort of an agreed proposition between the members of the Advisory Committee and the Anglo-Indian Community. It has been

[ ] English translation of Hindustani speech.

* Appendix.

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unanimously accepted and I hope this agreement will be given effect to by this House.

Mr. President: Does any one wish to say anything about it?

(No Member rose to speak.)

Mr. President: I shall put this to vote.

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel: I move:

"*Special educational facilities for Anglo-Indians.*—There are at present about 500 Anglo-Indian Schools in India. The total Government grant to these schools is about Rs. 45 lakhs being approximately 24 per cent. of the expenditure incurred by the schools. We feel that a sudden reduction in the grant will seriously dislocate the economy of these schools; and that it would only be fair to bring them gradually into line with other similar educational institutions after giving them sufficient time and opportunity to adjust themselves to the altered conditions now prevailing in the country. We also feel that in this way these institutions might become a valuable educational asset which would cater to the growing educational needs of the whole nation and not only to those of the Anglo-Indian community. We accordingly recommend that:

(i) the present grants to Anglo-Indian education made by the Central and Provincial Governments should be continued unchanged for three years after the coming into operation of the Federal constitution.

(ii) After the expiry of the first three years, the grants may be reduced by 10 per cent. and by a further 10 per cent. after the 6th year, and again by a further 10 per cent. after the ninth year. At the end of the period of 10 years, special concessions to Anglo-Indian schools shall cease.

(iii) During this 10 years period, 40 per cent. of vacancies in all such state aided Anglo-Indian schools shall be made available to members of other communities.

The term 'Anglo-Indian' used in this Report has the meaning given to it in the Government of India Act 1935."

This also is an agreed proposition accepted unanimously by the Advisory Committee and the Anglo-Indian representatives in the Advisory Committee. Therefore I hope the House will give effect to this agreement.

Mr. President: Does any one wish to say anything about this?

(No member rose to speak.)

Mr. President: Then, I shall put this to vote.

The motion was adopted.

CLAUSE 11

Mr. President: Clause 11.

The Honourable Sardar Vallabhbhai J. Patel: Clause 11.

"An officer shall be appointed by the President at the Centre and by the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards provided for the minorities."

This is only an administrative arrangement and I hope the House will accept this.

Mr. President: There are some amendments to this.

(Messrs. Mahavir Tyagi and Tajamul Husain did not move their amendments.)

Mr. President: There is no other amendment. Does any one want to say anything about this?

(No member rose to speak.)

Mr. President: Then I shall put it to vote.

Clause 11 was adopted.

CLAUSE 12

Mr. President: We go to clause 12.

The Honourable Sardar Vallabhbhai J. Patel:

"12. Provision shall also be made for the setting up of a Statutory Commission to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they labour and to recommend to the Union or the Unit Government, as the case may be, the steps that should be taken to eliminate the difficulties and the financial grants that should be given and the conditions that should be prescribed for such grants."

This is also an administrative provision for the benefit of the oppressed and the backward classes. I hope the House will accept it.

Mr. President: There are some amendments to this.

(Messrs. Tajamul Husain, P. Kakkan, H. V. Pataskar, and V. I. Muniswami Pillai did not move their amendments.)

Mr. President: There are no other amendments. I put clause 12 to vote.

Clause 12 was adopted.

The Honourable Sardar Vallabhbhai J. Patel: Sir, now all the items are over and the Report as amended by the amendments that have been passed and the resolutions that have been accepted, may be adopted.

Maulana Hasrat Mohani: Sir, I should like to have an opportunity to express my views on the whole report.

Mr. President: Now, we have considered each clause of the appendix and the report of course will be treated as changed to the extent that it is changed by the resolution of the House.

Now the proposition is that the report be accepted. Is it necessary to put it?

Mr. K. M. Munshi: Sir, this is a report by the Advisory Committee to the Constituent Assembly, and not a draft report to be adopted by the Constituent Assembly itself. Therefore I submit this report cannot be amended so that something may be put into the mouth of the Advisory Committee. What has been done technically is that the report has been taken into consideration. The House, having decided to take the report into consideration, the decisions embodied in the report and which find a place in the appendix, were considered. Those decisions were amended by the House. Therefore I submit, Sir, no decision need be taken on the report itself. It is a report of the Advisory Committee, and should remain as such. There have been certain amendments suggested to the report, but I submit they are out of place because the report can only be adopted by the Constituent Assembly if it is going to the world or going to a third party as the report of the Constituent Assembly. Therefore I submit,

[Mr. K. M. Munshi]
Sir, the decisions having been duly amended by the House, nothing need be done with regard to the report. That is my submission.

Pandit Lakshmi Kanta Maitra: What is there to show that the House has considered the report?

Mr. K. M. Munshi: Mr. Maitra says, "What is there to show that the House has considered the report?" A resolution was formally passed that the House do consider the report. Then it took the appendix. The appendix contained the operative decisions which find a place in the report. These have been either changed or accepted; but we cannot change the wordings of the Advisory Committee formulated in the report for the purpose of placing before the House. It has been placed here and there ended the matter.

Pandit Lakshmi Kanta Maitra: There should be something on record to say that the House has accepted the report with certain amendments, etc.

Mr. K. M. Munshi: The decisions have been accepted in part, have been amended in part, and the report has been before the House. My point of order is that there cannot be new paragraphs added to the report or anything subtracted from it because it is a report to the House, and decisions having been properly accepted or modified by this House, the report stands as it is.

This, Sir, is an important point of order. I want a ruling because in the past we have been talking that the report is to be either adopted or altered or some paragraphs added to it. It is a very erroneous procedure because you cannot alter the report of a Committee. This is not a sort of Appeal Court. This is only a report placed before the House for consideration.

Maulana Hasrat Mohani: I do not want either to add anything or subtract anything from the report itself. What I want to say is that whenever I stand up to make any observation, you, Sir, say that this is not the occasion. I say that this whole report should be put to the vote of the House, when I have a right to say what I want to say, while I oppose the whole thing.

Mr. President: Order, order. I am afraid you have missed that opportunity. When the proposition was moved that the report be taken into consideration, that was the right time when you could have expressed yourself. Probably you were not here.

Mr. R. K. Sidhwa (C. P. & Berar: General): The point of order is that we have taken the vote of the House for the consideration of the report, and then clause by clause we discussed amendments, and it is always customary that after the clauses have been amended, the report which was under consideration having been completed, should

be put to the House as an amended report for acceptance. That is the usual procedure, Sir, and now it should be put that the report as amended clause by clause should be adopted. That is the proper parliamentary procedure.

Apart from this, there are resolutions given notice of in regard to draft paragraphs of the report. Those resolutions stand on a separate footing, though they may be taken up or withdrawn or the whole report may be accepted.

Mr. President: What is the particular item you have in mind at the present moment?

Maulana Hasrat Mohani: I want to refer to the portion relating to the reservation of seats on communal lines. I say that the whole system is wrong. I want to refer to nothing else except that which refers to the reservation of seats and communal representation on communal lines. Will you allow me only a few minutes?

Mr. President: As I said earlier, you have missed the opportunity.

Dr. S. Radhakrishnan (United Provinces: General): It is quite true that we are not accepting the report which has been sent to us by the Advisory Committee. We have amended certain of the clauses in the schedule and all those amended clauses represent our decisions. In stating the decisions which we have made, we might add one or two sentences by way of preamble "with a view to develop a homogeneous, secular democratic State, the devices hitherto employed to keep minorities as separate entities within the State be dropped and loyalty to a single national State developed. While this should be our recognized aim, we do not wish to ignore altogether our recent past, so for a period of ten years the following recommendations are intended to secure adequate representation for the minorities." Before we put down the decisions, let us have some introductory sentences and make it clear that it is not our desire in this House to have these minorities perpetuated. We must put an end to the disruptive elements in the State. What is our ideal? It is our ideal to develop a homogeneous democratic State—that is why we have provided for fundamental rights, we allow no discrimination in public employment, we say it is a secular State. If you make it an Islamic, Hindu or Christian State, it would cause apprehension to the followers of other creeds. So we must declare our objective—that it is our desire to set up here a homogeneous, democratic, secular State, and those devices which were hitherto employed to keep the different sections of society apart have to be scrapped, if we now provide for certain compromise measures, it is simply because we wish to reckon with the past. We have to effect a compromise between the ideal we have in view and the actual conditions which have come down to us. These concessions will operate only for a period of ten years.

My suggestion does not touch the specific recommendations we have made. It merely states by two sentences the central aims we have in view. Every State, Mr. President, works towards a particular kind of objective. Whether it is the Soviet State or the Nazi State or the American State. What is our objective? Do we want to keep these minorities over all India as separate entities in the State?

[Dr. S. Radhakrishnan]

Have we not suffered enough? Are not the tragic happenings of the Punjab directly traceable to the development of disruptive tendencies and deliberate indoctrination? These are not the acts of God but the acts of man. You will find that in the I. N. A. or in the Indian army where we wished to develop loyalty to a single State we succeeded; where we wished to disrupt a State we have also succeeded. It is therefore time for us to put our foot down on all disruptive tendencies and take care to work for other aims and say that it is not our desire to maintain these minorities as minorities. The measures of compromise are transitional, and will be terminated at the end of the tenth year. So I move formally with the permission of the House that as a preliminary to the items in the schedule we insert the sentences I have mentioned.

Mr. S. M. Rizwan Allah (United Provinces: Muslim): Sir, I think the first point raised by Mr. Munshi is not in order. Usually the procedure is that a report coming from any committee is considered by this House and then the House adopts it in the amended form as its own report, and then it goes to the drafting committee as such. Therefore the contention of Mr. Munshi that there is no need for adopting the report is ultra vires and does not hold good. In the second place what Prof. Radhakrishnan said is also out of order. He wants to lay down a new objective by means of introducing his resolution but that should have been done at the time the 'objectives' resolution was under consideration. It is a new matter which he wants to introduce and so that is also out of order.

Mr. Shankar Dattatraya Deo (Bombay: General): Sir, we do not know what is exactly before us for consideration.

Mr. President: There are two points that have come up for consideration. The first was raised by Mr. Munshi that now that we have adopted the items in the Appendix it is not necessary for us to say anything about the report itself and it is not open to the House to put something in the mouth of the members of that committee which is not in their report. That is the point of order raised that we should not say anything about the report itself because we cannot say anything about it. And what our views are have also been expressed in the course of the decisions that we have arrived at.

Mr. Shankar Dattatraya Deo: Have you given your ruling on that?

Mr. President: I am explaining the position.

Shri K. Santhanam: Sir, I submit that only those things should be recorded which have to go into the draft and so I support Mr. Munshi's point of view. As for Dr. Radhakrishnan's point it is surely a good resolution but I do not see how it can go into the drafting at all. As a general exhortation it is all right but I do not think it will have any place in the Bill when it comes up. I think it is rather irrelevant.

Shri R. V. Dhulekar (United Provinces: General): Sir, the whole report is now before us and I submit that at this stage it is quite in order for Acharya Radhakrishnan to move that the object of this whole report is to do away with reservations of all kinds and also to do away with all disruptive forces within ten years so that after ten years

we may become one homogeneous nation. So I submit that this is the proper place to bring in Acharya Radhakrishnan's suggestion and the point of order is not at all justified because there is no other place where it can come in. So I support this amendment.

Mr. President: I think we have had enough discussion on the point of order and I may now be permitted to give my ruling. I am inclined to agree with the view that so far as this House is concerned it is only giving instructions at the present moment to the drafting committee to introduce certain clauses on certain items, and it is for the drafting committee now to take those instructions which are contained in the Appendix which we have just adopted. It is therefore not necessary to say anything more at this stage and it will be for the drafting committee to include what is contained in the Appendix as decisions of this House.

The Honourable Sardar Vallabhbhai J. Patel: Sir, for the information of the House I may mention that so far as the Advisory Committee's work is concerned, the things left over are, first, the part referring to the East Punjab and West Bengal and the other is the Tribal and Excluded Area Committee report which has now been received by the Advisory Committee, but it will take time for its consideration. The third thing is that the last time when we met in the Constituent Assembly we accepted certain fundamental rights and the remaining part of that report has still to be submitted. These proposals will be considered and the final report of the Committee will come before the House when the House meets next. For the present the Advisory Committee's report has been finished. I thank the House for the cooperation it has given and for finishing the work in the scheduled time.

Mr. President: What about the fundamental rights? Shall we take it up now?

The Honourable Sardar Vallabhbhai J. Patel: If the House chooses to take it up I have no objection.

Mr. President: As there is no time now we will take up our normal business tomorrow at 10 o'clock; but I wish to state that this afternoon we are meeting for a short time and for a special purpose, namely, the unveiling of the portrait of Mahatma Gandhi which has been presented to this House. I therefore propose that we should meet at Three o'clock for that purpose.

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

The Constituent Assembly of India re-assembled after lunch in the Constitution Hall, New Delhi, at three of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION AND UNVEILING OF THE PORTRAIT OF MAHATMA GANDHI

Mr. President: Mr. Pattani.

Mr. A. P. Pattani (Western India States): It is my happy privilege to place the following motion before the House—

"Resolved that the Constituent Assembly of India do accept the portrait of Mahatma Gandhi by Sir Oswald Birley, bequeathed to the nation by Sir Prabha Shankar Pattani."

It is not possible to express in words the happiness I feel today, standing in this Constituent Assembly of my country, to discharge a trust and fulfil the wishes of my late father.

The portrait that is to be unveiled presently, was painted by the great portrait painter, Sir Oswald Birley, in England during the Second Round Table Conference, and my father purchased it. I may inform the House that Sir Oswald had painted that portrait for himself and he agreed to part with it because my father wanted it and it was for India. When it arrived in India, however, it was put away carefully in its original packing. We were not allowed to see it and neither the family nor friends in England could obtain from him information as to what he intended to do with it. But some time after the Act of 1935 was passed, he told me very privately that he intended to present it to the nation when the new Government under that Act was inaugurated. Time passed, and there was no hope of that Act coming into operation. My father passed away in February 1938, almost within ten minutes of the time when he had planned to fly from Bhavnagar, on the 16th February, to Haripura to meet Mahatmaji. That programme and that meeting were subsequently cancelled by other circumstances. But before his death, he had told me two or three times to bear in mind this portrait and his wishes regarding the same.

As I submitted, Sir, the Act of 1935 did not materialise. But when the new Government was to be established under the Act of 1947, I spoke of the message of my father—which I shall mention presently—and of the portrait, to our Prime Minister Pandit Jawaharlal Nehru. That, in brief, Sir, is the history of this occasion.

I would like to take this opportunity to say a few words about Mahatmaji. I do so with reverence and great diffidence, for I am conscious that anything I say about Mahatmaji would be like attempting to measure the mountain of Kailas with a foot-rule, or, as it is said in our Shastras, trying to describe the beauty and grandeur of the Himalayas in pen and ink. And yet I myself and some other Honourable Members of this House may be permitted to take a little pride that we belong to Kathiawar, that land of Sri Krishna, Sudama, Narsi Mehta, Dayananda Saraswati, and Mahatma Gandhi. If we take pride in this fact, we should also try and follow their examples, especially the example of Mahatmaji, whom we have lived with and seen for he has been, and is, a friend of the Princes and the people. He belongs himself really to no community. He has no country. He has no home. The world is his home, and mankind the community to

which he belongs. Seeking truth and serving God, he cut across all distinctions and loved all who were honest, upright and God fearing, and it was this high plane of the spirit that attracted my father and made him a humble follower of the Mahatma. It was Bapu himself who told me that their "sambandh"—the English language has no word like 'sambandh'—began when my father first wrote to him when he was in South Africa. This was, I believe, in the last century.

The great fact of modern life, and in fact of world history, is that the Mahatma discovered that the root of all trouble both in India and in England was the influence of foreign rule in this country. Having made this discovery, he set himself to solve it; and by leading an unarmed revolt he brought India to freedom. It is for us all to make a success of this achievement, so that the fruit that he has given us may nourish everybody and lead us to a better life.

In conclusion, it was my father's wish that the picture should be delivered to the nation in his own words; these were:—

"It is a portrait of the saint who laboured more than anyone else for peace and who preached non-violence which is ultimately the only right way in human affairs." (*Applause*).

That, Sir, is the message I am to deliver, and there (pointing to where the portrait was installed) is the portrait. I have done my duty. I request that the portrait be unveiled.

The President then unveiled the portrait.

Mr. President: Honourable Members, I am sure I am expressing the sense of gratefulness of all the members of this House to Mr. Pattani for the present which he has made to this House (*Applause*). It was a happy inspiration of the late Sir Prabha Shankar Pattani to have preserved this beautiful portrait for so many years to be handed over to the nation on the auspicious occasion when India has got her freedom, and it is a happy moment for all of us that we have lived to see this portrait unveiled in this House on this occasion. It would be presumptuous on my part, particularly because I happen to be one of those fortunate many who have had the fortune and privilege to serve under Mahatma Gandhi for so many years (*Cheers*), to say anything about the work which he has accomplished. He came to us at a time when the country was looking for something which would help it out of difficulty. We had experienced a great sense of frustration which comes after attempts made which have failed. The country had made many attempts to become free; it was looking for something that would give it the necessary impetus and, above all, the kind of weapon which will enable it to win its freedom. Mahatma Gandhi aroused that spirit and gave that weapon in the hands of the people, and although we may not have come up to his expectations, we have at least succeeded under his guidance and his inspiration in winning the freedom for which we have all been longing for so many years.

It is not only in the field of politics, but there is hardly any field in the life of a human being which has not been in some way or other touched and brightened by Mahatma Gandhi (*Applause*). Whether we go to a village slum, to a city slum or whether we go to a big palace of a rich millionaire or a big Maharaja, there is hardly any place where

[Mr. President]

his influence has not been felt, and felt very well indeed. That influence has permeated our life to an extent which probably we do not ourselves quite appreciate and fully realise, and the greatness of the Mahatma lies in this, that as time passes, as ages pass, the influence which he has exercised not only on our lives but on the current of world history will be more and more appreciated and more and more realised. Such men are not often or easily born. They come once in a way in the History of the World to turn its course, to change its current and here is Mahatma Gandhi whom it is our privilege and our good fortune to serve under today, who has turned the current of history of mankind and who has in his own life-time seen how the work which he has started has borne fruit and is bearing more and more precious fruit everyday. The miracles which he has wrought in our life are so many that it would be impossible for any of us to recount them all in a short speech. We all know how he has made heroes out of clay, how he has moulded men of ordinary calibre into men of great capacity, of great culture and of great achievements. He has not only done that, he has created in the Nation as a whole apart from mere individuals, a longing for freedom and also, in a way, by his work fulfilled that longing. So it is that we stand here today to pay homage to him. This picture which has been presented to us will be in this House reminding every member who sits on these benches of the great part which he had played in our history and the World's history at a most critical and momentous time. It will remind members of the great duty which they owe to this country. It will remind all of us of the great heritage which he represents and which we all of us have got from our forefathers and above all, it will remind us how the freedom that we have won has to be utilized for the good of all. Let us hope that this picture will serve that purpose and we shall prove worthy of the great Mahatma who had led us to this goal. (*Loud Cheers.*)

On behalf of the House I formally accept this portrait. I hope you will all agree to this.

Shri H. V. Kamath: (C. P. & Berar: General): Mr. President, may I, Sir, in all humility, venture to suggest that it will be eminently in the fitness of things if alongside this magnificent portrait of Mahatma Gandhi, the father of Indian struggle, the Hall of this Assembly were adorned with a portrait of Lokamanya Bal Gangadhar Tilak, the father of Indian unrest and also that of Netaji Subhas Chandra Bose, the father of Indian Revolution. That, Sir, will be a thoroughly adequate and pictorially symbolic representation of the three distinct, the three well-marked stages of our struggle for political emancipation. I have no doubt, Sir, that this Assembly will accept such portraits with joy and gratitude. Will you, Sir, be good enough to permit the presentation of such portraits on subsequent occasions?

Mr. President: The House will now adjourn to 10 o'clock to-morrow.

The Assembly then adjourned till Friday, the 29th August 1947, at 10 A.M.

APPENDIX

No. CA/98/Cons/47.

CONSTITUENT ASSEMBLY OF INDIA

From

Shri G. V. MAVALANKAR,
Chairman,
Committee on the Functions of the Constituent Assembly under the Indian Independence Act.

To

The PRESIDENT,
Constituent Assembly of India.

SIR,

On behalf of the members of the Committee appointed by you on the 21st of August 1947 to consider and report on certain matters connected with the future working of the Constituent Assembly, I beg to submit this report.

I. *Preliminary* :

2. At our first meeting on Friday the 22nd, I was elected Chairman. The Committee met also on the 23rd and the 25th.

3. Our terms of reference are:

(1) What are the precise functions of the Constituent Assembly under the Indian Independence Act?

(2) Is it possible to distinguish between the business of the Constituent Assembly as a Constitution-making body and its other business and can the Constituent Assembly set apart certain days or periods solely for the former?

(3) Should the members representing the Indian States in the Constituent Assembly be given the right to take part in proceedings which do not relate to Constitution-making or to the subjects in respect of which they have acceded?

(4) What new Rules or Standing Orders, if any, and what amendments, if any, in the existing Rules or Standing Orders should be made by the Constituent Assembly or its President?

We proceed to state our views on these terms in the order mentioned.

II. *First term of reference* :

4. The business to be transacted by the Constituent Assembly falls under two categories:

(a) To continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and

(b) To function as the Dominion Legislature until a Legislature under the new Constitution comes into being.

III. *Second term of reference* :

5. It is not only possible but necessary for the proper functioning of the Constituent Assembly in its two capacities that its business as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature. We consider that for the purpose of avoiding complications and confusion, different days, or separate sittings on the same day, should be set apart for the two kinds of business.

IV. *Third term of reference* :

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

V. *Fourth term of reference* :

7. So far as Constitution-making is concerned, the existing Rules of Procedure and Standing Orders made by the Constituent Assembly and its President are adequate and only such amendments need be made therein from time to time as may be considered necessary in the light of experience. As regards the functioning of the Constituent Assembly as the Dominion Legislature, under section 8(2) of the Indian Independence Act, the relevant provisions of the Government of India Act as adapted and the Rules and Standing Orders of the Indian Legislative Assembly have generally to be followed. It will, however, be necessary to make modifications and adaptations in these Rules and Standing Orders in respect of matters common to both the classes of business to be transacted by the Assembly. We have not been able, within the time at our disposal, to attempt a detailed examination of these Rules and Standing Orders with a view to make suggestions as regards the modifications, adaptations and additions that may be necessary. We would suggest that necessary modifications, adaptations and additions be made under the orders of the President.

8. We desire to refer to three matters of importance which, besides being relevant to the main issue remitted to us for consideration, have a bearing on the question of the need for the making by the Constituent Assembly or its President of new Rules or Standing Orders and the amendment of existing Rules or Standing Orders.

9. The provisions for the election of a Speaker in Section 22 of the Government of India Act 1935 have been omitted. This read together with the other modifications carried out in that Act show that the President of the Constituent Assembly is the person to preside over it when functioning as the Dominion Legislature also, unless other provision is made in the Rules of Procedure of the Constituent Assembly

itself for the election of an officer for the purpose of presiding over the Assembly when transacting ordinary legislative business. It has to be remembered that though transacting two kinds of business, the Assembly is one and can have only one President who is the supreme head of it both on its deliberative side and on its administrative side. We would, however, point out that it would be constitutionally inappropriate for the person presiding over the Constituent Assembly when functioning as the Dominion Legislature being also a Minister of the Dominion Government. It is obviously desirable that steps should be taken for avoiding this anomaly. We would suggest that for this purpose the following alternatives might be considered:

(a) The President of the Constituent Assembly should be a person whose whole time is given to the work of the Assembly both when engaged on Constitution-making and when transacting business of the Dominion Legislature.

(b) If the President of the Constituent Assembly is a Minister, provision may be made in the Rules of the Constituent Assembly for the election of an officer to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.

10. Under the Government of India Act as adapted, the power of summoning and proroguing the Dominion Legislature vests in the Governor-General. We consider that, consistently with the powers which of right belong to the Constituent Assembly and with the Rules already made by it and with a view to secure proper co-ordination of the work of the Assembly in its two spheres, this power of summoning that Assembly for functioning as the Dominion Legislature and proroguing it should also vest only in the President. A new Rule to this effect may be added to the Constituent Assembly Rules of Procedure and a further adaptation of the relevant section of the Government of India Act may be made to bring it into conformity with this new Rule.

11. At present five members of the Dominion Government have no seats in the Constituent Assembly. These Ministers have the right to participate in the business of the Constituent Assembly when functioning as the Dominion Legislature, though they will not have the right to vote. They will, however, not have the right even to participate in the work of the Constituent Assembly when it transacts business connected with Constitution-making. We, however, recommend that such Ministers may by a suitable addition to the Rules of the Constituent Assembly be given the right to attend and participate in its work of Constitution-making, though until they become members of the Constituent Assembly they will not have any right to vote.

Yours sincerely,

G. V. MAVALANKAR,

Chairman

NEW DELHI,
DATED THE 25TH AUGUST 1947.

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2,500

Volume V
No. 10

Friday
29th August
1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 29th August 1947

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

MEMBER TAKING PLEDGE

The following member took the pledge :—

Lt.-Col. Brijraj Narain (Gwalior State).

ELECTION OF MEMBERS TO THE HOUSE COMMITTEE

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

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

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

The motion was adopted.

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

COMMITTEE TO SCRUTINISE DRAFT CONSTITUTION

Shri Satyanarayan Sinha: Sir, I beg to move—

"This Assembly resolves that a Committee consisting of—

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

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

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

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

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

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

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

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

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

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

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

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

It makes provision for two things. One is that for the purpose of giving effect to the decisions taken already in the Assembly—the Constitutional Adviser will prepare the draft. That draft has to be scrutinised by this Committee. Then, Sir, we have not here considered all the points which are ancillary to the decisions which we have taken or which are usually necessary and have to be provided in the Constitution. For example, we have laid down a principle that all the action to be taken in the Provincial Constitution will be taken in the name of the Governor. There are a number of things which have to be put in in order to give effect to this decision which the Assembly has taken and which have been given a place in the Government of India Act. Then there are provisions which are ancillary in the other constitutions, and some other provisions which must usually find a

place in the Constitution. All these will have to be included in our draft even though they may not have been discussed or decided here up to now. I do not think it proper to make any lengthy remarks on this amendment. It was not possible for us to discuss and provide for every necessary matter but without them the constitution will not be complete. We have taken decisions on almost all important points. Those will be given effect to but the draft will also contain things which are ancillary to these and also all such things as are otherwise necessary. The draft containing all these matters is bound to come up before the House for discussion and decision. I hope, Sir, this House will accept this amendment.

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

Shri Satyanarayan Sinha: I accept the amendment, Sir.

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

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

[Shri M. Ananthasayanam Ayyangar]

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

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

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

Seth Govind Das (C. P. & Berar: General): *[Mr. President, one very important matter has not yet been decided and

*[Translation of Hindustani speech.

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

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

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

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

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

Mr. R. K. Sidhwa (C. P. & Berar: General): Mr. President, as I have understood, the object of this Committee is to proceed immediately with the business that has been adopted by this House. That is to say, all the proposals that this House has considered as far as the

]* Translation of Hindustani speech.

[Mr. R. K. Sidhwa]
Union and Provincial constitutions are concerned, will be duly framed, excepting those subjects, namely language, citizenship and the principles of the first part which are to be held over. The Committee cannot discuss these matters until these and other subjects which are not yet decided by this House have been discussed threadbare again in the next session. But that would not prevent the Committee from proceeding with its business. Mr. Santhanam's apprehension therefore is not tenable. The object of this Committee is to proceed immediately with its business and therefore, I feel, Sir, there is no necessity for Mr. Santhanam to be apprehensive.

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

Dr. B. Pattabhi Sitaramayya (Madras: General): Mr. President, Sir, we cannot read into the resolution more than the wording permits and therefore I am not perturbed by what Mr. Santhanam has suggested. As a practical politician, he expects that the Bill to be ready must be complete and cannot be full in certain parts and absolutely blank in other parts, and so he thinks that the Bill should be a complete one. When it is made a complete one, his suggestion comes into operation. Whether there is to be a complete Bill and his suggestion should be permitted to come into operation is the issue that we have to consider. If that is to be accepted, then it will be taking away the powers of the whole House and constituting the Sub-Committee into a kind of Committee Delegate of the Constituent Assembly, a step that is not desirable by any means. As Mr. Santhanam has himself categorically described the first three Chapters of the Union Constitution Committee and the last two bits of the same, as well as the Provincial and concurrent and a good half of the Federal lists of the Union Powers Committee constitute a big chunk which has been left out and has yet to be considered by the whole House. For instance, the Union Constitution Committee and the Model Provincial Constitution Committee had a joint sitting and appointed a Sub-Committee in regard to linguistic provinces and its recommendation has been considered by the Joint Committee of the two Committees. What is to happen to that hereafter? Should it be dangling in the air like Trisanku, neither in heaven nor on earth? Should it be given the go-by? Should it be passed over? I mention it only as an example, not that I am a faddist about the question. The matter has to be taken as an illustration. I ask; "when on November 6th, this Assembly reassembles, for what purpose is it going to reassemble? Is it going to be presented with a Bill, complete in every detail, and then consider it as a matter of course?" In that case, it will have embodied in it portions which have

not been considered at all by this House even primarily. If that is not so, then, the November 6th Session will have to address itself to a consideration of the left-over points in which case no Bill can be ready by that time. This is the difficulty that presents itself to me logically. Therefore, I would like the President to make the position clear and also if possible to convene a Session of this House in the month of September or October in order to complete all the points which have been left unconsidered. Then the material that will be presented to the draftsmen or the drafting Committee or the scrutinising Committee will be ample and complete and then only they can deal with the matter. I make this suggestion in order to have in our mind a clear idea as to what is going to happen and if possible to persuade the President to convene a session in the month of September or October for completing the business by attending to those other matters which have been left over.

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

[Pandit Lakshmi Kanta Maitra]

Then, Sir, I thoroughly agree with my Honourable friend Mr. Kher when he said that the drafting should be entrusted to certain responsible persons and that too many cooks would spoil the whole broth, and that these responsible persons should be entrusted with the specific duty of seeing that the decisions that have been taken so far are really embodied in the Bill with such alterations as may have been suggested. I want to ask you, Mr. President, to indicate to us whether or not, when the draft bill is prepared and formally introduced in this House for consideration, you are going to allow a Select Committee of this House, elected by members of this House, representing all sections (and 'by all sections' I mean also the States) to go into and examine the whole Bill that is presented for the consideration of the House. Unless, in my opinion, a Select Committee is appointed to go into the whole question, to examine the bill with meticulous care in respect of every single provision of the Constitution Act, I am sure we are not going to get satisfactory results. Let us not forget that once a Constitution Act is passed, it is not changed within three, or six months or even within a year and a half. Therefore, we must take every possible care and precaution so as to make it as faultless as is humanly possible. No human institution is perfect, I know. But we must take all possible care to see that the Constitution Act framed by us is as nearly faultless as possible. We will defer our judgment for some time until we are satisfied with all provisions of the Constitution Act. Therefore before we put the final imprimatur or seal of approval on the Constitution of India, I ask you carefully to consider whether you will not insist that on the presentation of the Bill there should be a Select Committee to examine the whole Bill and all its provisions with the utmost care and caution and then when the report of the Select Committee is presented before the House, you should have the final opportunity of carefully discussing every single section of the Bill. Personally speaking, I do not feel that we need proceed with the drafting of the constitution at this terrific speed now when we are going to introduce rules and regulations by which this Constituent Assembly will also be functioning as a Legislature. While functioning as a legislature this House can carefully examine the provisions of the Constitution Act as well. With regard to the portions that have been left out, I would suggest that if it is insisted that a complete draft should be presented to this House by the November Session, then the draftsmen may proceed on the assumption that the portions of the report of the Union Powers Committee that have not been so far discussed by this House or left over, have the approval of the House. If, however, we find that these recommendations in the report of the Union Powers Committee will not ultimately meet with the approval of the House, then we will modify them, and if the principles are not later accepted, the draft also will be modified accordingly. Therefore I do not agree with my Honourable friend Dr. Pattabhi Sitaramayya that an intermediate session would be necessary to complete the programme that was placed before us. I do not think it will be possible in the whole of September to convoke another session of the Assembly to go into this matter. I must say that the November Session should first of all discuss the

portions that have been left out and which can be pieced together towards the end. The draft can follow. We shall expect the draft of the Bill in three months' time. After all the constitution of a country is not a small matter and cannot be lightly treated. I would therefore request that you, Sir, should give a clear indication to the House as to how we want to proceed. So far as I am concerned, I do not know if I am voicing the feelings of my Honourable friends here, but I am inclined to think that the final draft of the constitution should be in the hands of Honourable Members of the Constituent Assembly for at least three weeks before it is taken up. Unless you give them sufficient time carefully to read and scrutinise the provisions that you make in the draft, you will be simply taking a terrible lot of time here. You cannot stop the flood gates of amendments that would be pouring in from all directions, if you give them insufficient time. I do not think that for the scrutiny of the draft constitution of the country three weeks' time is too much. I mean that the draft will be prepared and circulated to the members at least three weeks in advance of the session. If you can do that, then the Honourable Members would come prepared thoroughly, and the amendments that may be tabled in connection with the different clauses probably will not be so numerous as they would otherwise be, if the Bill is drafted in haste and if the draft is circulated to the members only a few days before the session commences. This is a very important matter. Sir, I do not mean to cast any reflection on your office, Mr. President, but from our experience of the Central Legislative Assembly Department, I may say that your secretariat is not half as efficient as that of the Central Legislative Assembly. That is what we find from the way in which papers,—daily order papers,—are circulated to us. On the question of the supply of the draft constitution, if we are confronted with excuses such as "shortness of time" or "we sent to your address" or "we could not send it" and so on and so forth, that will be disastrous. Therefore I would say that it is very necessary to see that these drafts are sent to us in time.

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

Mr. Alladi Krishnaswami Ayyar (Madras: General): Sir, on a matter like this it is as well we are sure as to what exactly the import of the resolution is. One thing must be made quite clear, namely, that in regard to the decisions already reached, they will be treated as binding, though if errors are discovered or unforseen difficulties arise, it will always be open to the House to review the decisions. The analogy of a Select Committee in the case of an ordinary bill that is introduced by Government is misleading. We have taken nearly a year for the consideration of various subjects by certain committees of the House. There has been a Fundamental Rights Committee, the Union Powers Committee, and the Union Constitution Committee and they have considered and placed their decisions before this House. In regard to matters which have already been considered by this Assembly and in regard to which decisions have been reached, the scope of review

[Mr. Alladi Krishnaswami Ayyar]

at a later stage must naturally be limited. The analogy of an ordinary Bill introduced by Government without reference to the Assembly is misleading. There the Government Department prepares a Bill without reference to the legislature and places the Bill before the legislature. Then the House appoints a Select Committee which goes into the question. If you treat the whole question as a draft without reference to the decisions already reached on various important matters and if clause after clause were taken and discussed, I think it will be like beginning again. There will always be a beginning to the procedure, never an end of the procedure started in this House. I think it is as well that it is made clear that in regard to matters in respect of which no decisions have been reached they stand on a different footing.

But difficulty arises on account of my friend Mr. Santhanam's suggestion that this committee must take into account the other set of provisions in regard to which no decision has been reached. I do not say that it is not open to the House to review the entire decision but there must be some degree of finality in regard to the work already done for about eight or nine months, so that we do not begin again as if it is the case of an ordinary Bill placed before a Select Committee ignoring the reports that have been submitted by the committees, the discussions of this Assembly on clause after clause and the votes that have been taken on the floor of the House. I do not know whether it is the wish of the House that this Committee should consider all matters. Sections which have not become the subject of decisions by this House is another matter. At any rate, some distinction must be drawn between cases in which decisions have been reached in this House yesterday, the day before and during the whole of the various sessions of this House. We have discussed clause after clause and there have been very long and elaborate arguments on the floor of the House. We owe a duty to the public, to make them feel that all this time is not to be treated as waste of time. That is the only point I want to make clear.

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

Apart from that Sir, what is the exact situation in which we find

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

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

Mr. Tajamul Husain (Bihar: Muslim): Sir, I rise to oppose the motion of Mr. Satyanarayan Sinha. In my opinion it will be wrong to appoint a committee at this stage. I do not believe in doing work piecemeal. I think it is far better in our own interests that we sit here till we have finished the consideration of all the Reports. I think it will not take more than about a fortnight to finish the consideration of the Reports. If we continue the work now, I think that by the 12th of September we will be able to finish it. If Government, for certain reasons, are not prepared to do so, being busy elsewhere—let us adjourn

[Mr. Tajamul Husain]

for a few days and meet again. But let us not end this session now. Let us adjourn for a few days, meet again and finish the work which we have taken on hand. When all the Reports are finished, let us then appoint a Committee, and then adjourn for about three months. I think it will take the Committee about two months to scrutinise the whole thing and submit its report in the form of a Bill. And then we will take at least one month to consider the Bill and then we can come to the Assembly to deal with that Bill. Therefore, I say, let us go on till the end or at least till the middle of September and finish consideration of these Reports. Suppose we go to the end of September, we can adjourn for October, November and December, and meet again in January and then go on till we finish this work. I think if we sit for two months during January and February, then by the end of February we shall finish the work. For the three months we can stay here as the Members of the Union Parliament. During these three months, part of the time can be spent in this way. Then we can sit from the beginning of March to end of March or middle of April for the Budget Session of the Central Legislature. I think, Sir, for the smooth working it would be better that we continue now, and appoint a committee after the entire work of considering the Reports is finished. I have come here to oppose the original motion of Mr. Satyanarayan Sinha.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. President, Sir, the process of constitution-making has been going on for the last eight or nine months. This Assembly appointed certain committees to go into several topics, and to recommend a constitution for the Province and for the Centre, and some committees were appointed to make reports on special subjects such as the Powers of the Union, the Minorities Rights, the Fundamental Rights and so on. After these committees had gone into the several matters referred to them, and after great care and scrutiny, they made their reports to this Assembly. Most part of the reports has been discussed and debated upon in this Aseembly, and this Assembly came to certain conclusions, and decided certain matters this way or that. So we have reached a certain stage now. After the committees had studied the questions and prepared their reports, these reports were discussed and debated in this Assembly and most of these questions have been decided upon and only a few topics have been left over. Now, two questions arise. The first is, whether a select committee to draft the Constitution should be selected now, or whether it should be selected after the remaining topics also have been decided upon by this august House. That is the first question to be decided. The second question is whether the decisions that have been taken by this House can be re-opened again at the stage when the draft Bill comes before it. These are the two questions to be decided on this motion. I am clearly of the opinion that there is no room, nor justification for reopening the decisions on those topics that have already been decided upon. As my friend Mr. Alladi Krishnaswami Ayyar put it, they have been debated upon, they were scrutinised on reports drawn up by committees competent to consider them. They were again thrashed threadbare and debated upon by this body. Therefore, Sir, I think, no useful purpose would be served by reopening them again at this stage, nor is it right and proper.

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

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

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

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

Mahboob Ali Baig Sahib Bahadur: The second question is about the select committee for drafting the Bill. I entirely agree with my friend Dr. Pattabhi Sitaramayya that the topics left over should also be debated upon, discussed and scrutinised by this House and when we have done that, then that will be the time to appoint this drafting committee. I do not see any reason why certain topics which have been left over should not be discussed by this Body. Is it considered that the topics left over are not of as much importance as the others? It is clearly not so. One Member has said that after the Bill is presented to the House it should go to a select committee. I do not think that is necessary at all after this larger body, the whole Assembly, had once gone into the whole question and decided on the issues one way or the other. Therefore there is no necessity for a select committee to be appointed before which the Draft Bill should go, and I submit that just as we have decided on many topics, the remaining topics also should be decided by this body so that what is left to the Drafting Committee will be only placing the topics that have been decided on, on which decisions have been arrived at, in a legal form and providing any consequential provisions that may be necessary from those decisions. That is all. When the draft Bill comes before the House it should be very much easier for us to get through the business and pass it in a shorter time than would be necessary if we were to go through it *in extenso*. Therefore, I submit that it is not open to us, at any rate, normally, to reopen the question at the time the draft is placed before us. At the same time I am of opinion that this House should decide, as it had decided other topics beforehand, regarding matters that had not been decided and it is not necessary for us at this stage to appoint a Committee.

Shri Raj Krushna Bose (Orissa: General): Mr. President, I do not have to say much in this connection. In my opinion it would have been proper if we had maintained continuity and consistency in the proceedings hitherto. From the discussion today it appears that we are deviating from the course which we were following. At first, we had thought of determining the

[Mr. Shri Raj Krushna Bose]

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

As I have already said, from now onwards, when the Constituent Assembly is summoned an indication should be given that we will have to stay here for approximately so many days. The members will therefore not form their own idea that the work will be finished in so much time and make their arrangements accordingly. On the contrary, they will make their programme on the basis of your directions and then these difficulties will not arise.

Mr. Jaipal Singh (Bihar: General): Mr. President, Sir, I oppose the Resolution that has been moved because I feel that it is not right for us, at this stage, to appoint any Committee, whether of experts or otherwise, which can pry into things which we have not yet decided.

[Mr. Hussain Imam]

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

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

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

The motion was adopted.

Mr. President: Mr. Satyanarayan Sinha may reply.

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

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

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

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

[Mr. President]

necessary for giving it the fullest possible consideration and the members will have an opportunity of considering every word that is used there and of giving their own decision on the draft. I think with that the members will be pleased to accept this resolution in the amended form which gives the Committee a somewhat larger latitude in preparing the draft in regard to matters which do not come exactly under the principles which we have decided but which are implied in them. I now put the amendment of Mr. Kher to the House.

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

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

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

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

The question is:

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

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

The motion was adopted.

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

The motion was adopted.

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

Honourable Members: We are not moving the amendments.

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

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

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

The question is:

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

The motion was adopted.

REPORT OF THE CONSTITUENT ASSEMBLY FUNCTIONS COMMITTEE

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

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

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

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

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

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

The question that remains is, what is to happen with regard to their relationship to the Constituent Assembly. At present, as they are not members of the Constituent Assembly, they are not entitled to participate in the work of the Constituent Assembly so far as it relates to the making of the Constitution. The Committee came to the conclusion that it was necessary that their guidance should be available to the Constituent Assembly in the matter of constitution-making and therefore just as section 10 sub-clause (2) permits them to participate in the work of the Legislature so also the Constituent Assembly should make a provision which would permit Members of Government who are not members of the Constituent Assembly also to participate in the work of the Constituent Assembly.

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

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

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

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

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

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

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

Para. (iv) runs as follows:

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

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

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

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

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

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

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

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

(i) The functions of the Assembly shall be—

(a) to continue and complete the work of constitution making which commenced on the 9th December, 1946, and

(b) to function as the Dominion Legislature until a Legislature under the new Constitution comes into being.

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

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

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

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

Coming to my resolution,

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

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

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

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

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

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

In this connection, I may mention one fact which I omitted to mention in the beginning. The power of summoning the Assembly and proroguing is, according to the resolution moved by me and according to the report, to be vested in the President. As already stated, under the Government of India Act, as adapted, for the moment it rests with the Governor-General. That of course means, Governor-General as advised by the Prime Minister. But our legislative function being only an aspect of the Constituent Assembly as a whole, it is

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necessary that the Constituent Assembly should remain independent of the Governor-General. Therefore, it was thought that the President would be the proper person to summon or prorogue the Legislative Council.

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

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

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

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

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

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

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

"There shall be paid to the President and Deputy President of the Council of State such salaries as may be respectively fixed by Act of

the Federal Legislature, and, until provision in that behalf is so made, such salaries as the Governor-General may determine". The adaptation merely says that in sub-section (4), for "and the Deputy President of the Council of State", substitute "of the Dominion Legislature". So the provision remains more or less intact so far as sub-section (4) is concerned, except the change that is contemplated in the nomenclature of the legislatures and the words the Council of State and the Lower House have been removed and the words "the Dominion Legislatures" substituted. So, when the entire scheme has been changed and the name Speaker has been wiped out in section 22 of the Government of India Act, and in the following section 23, I do not know if it is quite right or legal for the name Speaker to be introduced here. It would probably be better to adopt the wording of the original report namely 'an officer to preside', whatever the designation he might get ultimately.

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

Sir, yet another matter which I would like to mention here and which relates to the amendment of which I had given notice, is this. We are dealing with a number of anomalies because the position in which we are now placed is not of our own creation. A number of factors have come into play by reason of the rapidly changing political position of our country and we have to carry on as best as we could. In the circumstances, without going into personalities, I think it best, Sir, that the sphere of action of the presiding officers of the Constituent Assembly over its two functions should be clearly defined and that is why I wish Mr. Munshi had reproduced in his amending resolution those words in paragraph 6 of the Committee's report which had clearly stated—it has to be remembered that though transacting two kinds of business, the Assembly is one and can have only one President and that the President should be the supreme head of it, both on its administrative side and on its deliberative side. I may at once assure the House that in bringing to the notice of the House this particular, clear and precise enunciation of the functions of the President and the consequent delimitation of the functions of any officer that the President or the House might appoint, I have no intention of either trying to put extra power in the hands of anybody or take away the power of anyone else. Only I feel that when we are dealing with circumstances over which we had no control,—we are trying as best as possible to get on with the work that we are obliged to do—let us have a precise defini-

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tion here and now so that later on, whatever happens, if by any chance there is any conflict, it will be known exactly who is the supreme authority. I wish Mr. Munshi had put this idea in his amending resolution. It is quite adequate for our purpose if it is acknowledged by the mover that the wording of the report of the Committee is supreme and that it cannot be altered even by the amending resolution which has been moved. I think that assurance will serve the purpose. After all the position that we are envisaging now might last only for six or eight months. Thereafter, this Assembly will function principally as the Dominion Legislature, until the new constitution comes into operation, and there might have to be other changes also in the status and powers of the Presiding Officer. But for the time being I think a precise definition of the sphere of his activities and emphasis on the fact that the President of the Constituent Assembly, notwithstanding the fact that he concedes with the permission of the House some powers to another person, still remains the supreme head both in regard to the administrative and deliberative sections of the House, will go to satisfy fears and doubts in the minds of Members. I also hope that either Dr. Ambedkar or Mr. Munshi will try to clarify the doubts that I have stated in regard to items (iv) and (vi) of clause 1 of the amendment moved by Mr. Munshi.

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

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

Dr. P. S. Deshmukh: Mr. President, Sir, I would not go so far as to describe the present situation created by the presentation of the report and the proposals embodying the proposed decisions on the report as a messy situation, as has been done by my friend who preceded me, Mr. Krishnamachari. But I must say, Sir, that I consider the report not very satisfactory. If we analyse the contents of the report, I think many Members, if not most, will agree with me that the report

states either what is most obvious or what is a matter of pure commonsense for anybody, Secondly the report contains certain alternative proposals. For example, it says you can have one President or two as you like. Stating alternatives is, I submit, Sir, of no use. What we expect such a committee to do is to give us proper guidance. It is clear that the Committee has failed to do this. Thirdly, Dr. Ambedkar had himself to admit that there were two items on which they could not reach a final decision.

And fourthly, it was clear from the speech of Dr. Ambedkar, that they relied more upon logic and on what was political, rather than giving this House a direction as to what was legal and constitutional. I refer to the recommendation as regards the States representatives. Let it be remembered that we have no quarrel whatever with the States representatives whether they have come here on behalf of the rulers or the people. I welcome them; I would like them to be absolutely identical with us and have all the privileges and all the rights that any of us coming from other parts of India have. But none the less I believe it was the duty of the Committee to tell us what the legal position was so far as the exercise of the rights of these persons coming from the States and sitting in this House was concerned. It was not necessary to tell us what was logical and political. We can and shall exercise that discretion ourselves. The direction that we really wanted was as to what is constitutional and what would be legal and then ultimately there might have been a sentence or two with regard to the propriety of their proposal. And I should like to make it clear that I mean no offence to any particular member of the Committee—and least of all to Dr. Ambedkar—but there is a fair number of members in this House who characterise the work that is done by several of our committees in the same terms as I have been compelled to use in connection with this particular report. And that is the reason why they have not been satisfied with some of the reports that we got from time to time at least from some of these committees.

Even so, Sir, I think it would be futile for me to hope that it will be possible for you to give us more time for the consideration of the report or to refer the report back to the same Committee for further consideration. That is too much to expect. I have been sufficiently long in politics and in the legislatures to know that wise counsels do not always prevail. So I am not going to indulge in requesting you that the Committee's report should be turned down or it should be referred back. All that I wish to point out is that what is before us is not satisfactory. We have not been guided and directed on the lines on which we should have been directed. and as such the whole situation is very unsatisfactory. I will take only one or two points. I was very glad that Mr. Krishnamachari made a very cogent speech and pointed out quite a few vital defects in the Resolution that has been moved by Mr. Munshi. In fact the main purpose and the main thing with which members of the Committee should have concerned themselves was as to what is the result of the adaptations which have been made behind our back. There is reference to only one or two modifications that have been made. But all that is a *fait accompli*. We have the whole Government of India Act altered to suit, God knows whose convenience, or according to whose intelligence and dictation. But we have

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certain ready-made decisions before us and we are trying to tinker with them in certain places by means of this report and the resolution. We have as a matter of fact at least two definite things before us. Although we have been given the powers of a legislative assembly and called a Dominion Legislature the adapters of the 1935 Act removed the Speaker, the section referring to the election of Speaker having been omitted. Secondly, we have all been agitated about the question as to whether M.L.A.'s from the different provinces should sit here as full-fledged members of both the Legislature and the Constituent Assembly or not. The position is that that section by which a person was prevented from being a member of two legislatures has been quietly removed from the 1935 Act and this was imposed upon this House. We have no quarrel with it; we want to get on with the work. I am merely mentioning this point by way of showing that the position is unsatisfactory. I do not question the right of any one to change or modify the sections but the whole situation is not sufficiently clear and not of such a nature as to enable the members to be clear on any particular matter. Of course when things are proposed and resolutions are moved we have got to support it in whatever condition it is, and we are so anxious to get on with decisions and constitution making that we do not mind in what messy or unsatisfactory condition it is. But at the same time I want just by way of criticism to suggest that it is not a very happy situation, and if it is possible for you or the Mover of the Resolution or for the Mover of the amendment to do something to attend to our grievance and redress it at least in part I shall be obliged and I am sure many other members of the House also would feel obliged.

Shri Biswanath Das (Orissa: General): Sir, I have very little quarrel with the Resolution that was so ably moved by Mr. Munshi but I must frankly confess that I am not happy with the report that has been presented to us. The report seems to support the adaptations which I am afraid very few Members of this House will do. Both the report and Mr. Munshi's Resolution therefore proceed on the basis that the Constituent Assembly which has been the dominion parliament from the 15th of this month has to function in absolutely two different capacities, namely, the Constituent Assembly and the dominion parliament. Having taken up this stand, namely, absolute separation out and out, they necessarily follow the same course throughout their plan and that is where the parting of the ways comes in. A reading of the Indian Independence Act of 1947 shows that the Constituent Assembly is the supreme legislature of this country. That is a position which has been accepted by the Constituent Assembly or, if not by the Constituent Assembly, at least it has been accepted by our leaders and the Constituent Assembly is a party to it from the 14th August. This Constituent Assembly has accepted the Indian Independence Act, has elected its leader and has authorised the leader to go and invite Lord Mountbatten to be the Governor-General of India. In that view of the question the Constituent Assembly, as such, has accepted the position assigned to it by the Indian Independence Act of 1947. Therefore there is no use saying, today at this late hour, that we function as two different bodies, that we function differently

and absolutely for different purposes. The purposes are one and the same; and while on the one hand we have to prepare a Bill for the future constitution of India and pass it into an Act we have also to look to the day to day administration of the country and also undertake such other legislation as might be necessary. Therefore the proposal of the Committee to function in a dual capacity and also the Resolution of my Honourable friend Mr. Munshi giving the silent approval of the House to the same cannot be accepted by us. That is where my complaint is. Sir, if once we accept this principle it means two secretariats and that we will have the same experience of the secretariat of the Constituent Assembly who are not efficient nor very polite and should undergo some training in politeness and good manners.

An Honourable Member: Can you prove that?

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

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

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

Some Honourable Members: The mike is not working.

Shri Biswanath Das: I am very sorry. I will speak loud. That being the position, I feel that the time has come when a little plain speaking is necessary and we have to make it very clear that we function here as absolutely one legislature for no different purposes, except one of convenience for the transaction of our business. Only to that extent am I prepared to agree with the Committee that we may allot different days for constitution-making and different days or hours on the same day for ordinary legislation or for the discussion of other measures and executive work. That being the position, I suggest that this duality of functions should cease.

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

Shri Biswanath Das: Yes, Sir. Having done that, I come to the second question on which I wish to address the Honourable Members of this House, and that is the question of adaptations. Sir, adaptations have been undertaken without consulting the Honourable Members of this House and important alterations have been made to which I must record here a note of protest. Let me illustrate my point. We have met here in the Constituent Assembly, in a single session. We have no session except one, namely we begin and we will close as and when

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we decide. Our rules are very clear in this. If we adjourn from time to time it is because for our own convenience and for the convenient transaction of our business. But the fact remains that the Constituent Assembly functions as one single body till its main business is over, namely, the preparing and passing of our constitution. Sir, having seen those rules, the Parliamentary Act has been framed which means it has been accepted. Therefore the position remains that the Constituent Assembly sits all along, be it for one year, or two years or six months, it is all one session. This being the position, I strongly protest against the adaptations wherein it has been laid down that the Governor-General has to summon us to sit in sessions of the Parliament to transact business. It is no concern of his, no business of his. We are members of the Constituent Assembly and the Constituent Assembly meets and adjourns at its pleasure. We cannot delegate its functions to the Governor-General however much we may love him, like him or respect him. Nor do we delegate this important function to the Honourable President, though we love him, like him, and esteem him. Sir, this adaptation is very unfortunate and I think it is fair that we should record our protest.

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

I now come to the third question, the participation of the States. My Honourable friends, the Members of this Committee have recommended to us that they, the States representatives should be with us. We are prepared to have them here. But is it their proposal that they should not only participate in our deliberations and discussions but also in the matter of voting? I must frankly confess that I must take more time to think over the question than what has been given. So far as the States representatives are concerned, they constitute about 62 Members—a fairly good fraction of the strength of the legislature. It would be very hard, very difficult for us to agree without further consideration whether these 62 Members of the Constituent Assembly should be allowed to vote with us also in a budget for which they have absolutely no responsibility—except in respect of the three subjects.

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

Mr. Hussain Imam: Mr. President, I was very sorry to see that some of our colleagues have taken objection and exception to the work of the Committee. As a member of the Committee, I have come here to explain the position in which we worked. We were restricted by the term of reference which was originally framed here.

The Members who are being wise now did not suggest any modification in the term of reference. But now, having worked under that restricted term of reference we are being criticised on two counts. Firstly, that we have exceeded our limits and the other that we have not done enough. These two self-contradictory charges have been levied. Now what was the position of the committee? A committee is never superior to the parent body which has created it. The parent body is always supreme and has the right to modify or change the suggestions of the committee. The committee cannot impose its will. What it really does is to bring forward before you in a concrete form all the pros and cons of a particular course of business. Now, it is obvious that the Constituent Assembly has dual functions. Even that has been attacked by the *ex*-Prime Minister of Orissa, that it should have no dual functions. Now, this is what was regarded by one Honourable Member as obvious and by the other Honourable Member as wrong. But what is the position? Please remember that after the Indian Independence Act, the whole power for making the constitution for today and tomorrow vests in you; for the whole of the administration of today and till such time as the new constitution starts functioning, the power vests in you. This House being in that position, it cannot and should not ignore one of the two functions. The genesis of this Committee was that a question was raised here and discussion took place that at the present moment we should have some forum to question the Executive Government on the actions which they are taking in the present circumstances. Pandit Jawaharlal Nehru was present and after a lot of speeches, he said that it would be better if some Committee were to sit and examine all the implications and suggest ways and means. We were working really in order to make arrangements for dual functions to be performed simultaneously. The two functions are so separate that they could have been kept in water-tight compartments. We might have sat in August, say, as the Constituent Assembly, and in September as the Legislature That was one of the courses open to us. The other course open to us was that we should have separate days in the same session. The third course was that within the same day we should have separate hours. All these subjects were referred to us and as conscientious people we have not given any preference to any one of the three courses. We have pointed out all the three courses that are open to you. You can have either different hours in the same day, or you can have separate sessions, but we have indicated that instead of different hours, we prefer different sittings. You can have a morning sitting for one purpose and an afternoon sitting for another purpose. That is all we have done. We have left the discretion entirely to you and the better course would have been to allow the Executive Government which is responsible to the House to use its discretion and give us the time for the legislative business just as they do for non-official business in the sessions. We can similarly have two kinds of days, Constituent Assembly and the Legislature. A time may come when the Constituent Assembly function may become so small that even one day would be enough in the week and four days may be devoted to legislative business, or at other times you may have it the other way round. I

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mean, you may be doing the Constituent Assembly work for four days in the week and one day only for the legislative work.

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

The question which was put about Section 10 (2) of the Government of India Act, while it lays down that a Member of Government must become a member of the Legislature within six months or vacate office, is also one of those Sections which you can change and if the Executive Government feels that a change is necessary it can make that change; or if it feels that it is necessary to bring them into the Constituent Assembly, there are openings enough for those Members to be brought in. I therefore think that it is really making a mountain out of a molehill to suggest that any adaptation of the clauses will stand in the way of the work. Knowing that it is a little bit difficult and takes time to make adaptations, we have suggested a better course, that the Constituent Assembly being a sovereign body and having the right to have these rules framed as it likes, we have recommended that the work which we think to be very essential and immediate should be done by means of rule-making power. For instance, the question of summoning the Legislature. Instead of suggesting that the clause should be changed and the power should vest in some other authority than the Governor-General, we have suggested that the Constituent Assembly's own rules should be so adapted as to enable the President to have the power. But to say that not even the President should have power to fix the date and it is so important that the House cannot surrender that right to anybody is, in my opinion, showing too much suspicion. Knowing the state of affairs through which we are passing, we have to rely on our officers, on the President, to do the right thing. The President is always subject to the House. Although he is the supreme head, nevertheless, under the democratic theory he is subject to the vote of the House. So if he does wrong you can always correct him, but for executive functions you must have an executive head. There are certain things which

democracy even delegates to executive, and it is one of those functions, *i.e.*, the summoning of the Legislature, which is sought to be given to the President. We always give directions. The executive carries them out. For instance, the exact dates had not been fixed for the last session. The last session was called on a date which the President found suitable and no one raised an objection to that. So far the President has not used his discretion in a wrong manner.

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

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

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

Besides, there is one more question about which many people have misgiving, and that is as to what should be the rights of the representatives from the States. I think that these representatives should be able to discuss our problems and also vote upon them. I want to tell those who have any misgivings that their fears are not proper. We must now consider the whole of India as a single unit, and every individual who takes his seat here, every member who comes here should find an honourable place. I think it would not be proper if we tell him that he can speak only for a short while, or, when the occasion arises to express a definite opinion (which comes only when hands have to be raised either in support or opposition), we tell him that he has no right either to vote or to express his opinion.

*[Translation of Hindustani speech.

[Shri R. V. Dhulekar]

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

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

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

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

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

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

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

Sir, now a point has been raised whether there should be another President and another Speaker when we sit as a legislative body. I

*[Translation of Hindustani speech.

[Mr. Tajamul Husain]

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

Pandit Hiralal Shastri (Jaipur State): *[Mr. President, my friends Dr. Deshmukh and Mr. Dhulekar, have asked me to make my humble submission before you. Some are of opinion that from the Constitutional and legal point of view the representatives of Indian States should not be given equal rights here; others have suggested that even though the States are backward, they should be allowed to participate fully. I revere this Constituent Assembly and I deem it an honour to be elected as its member. But I canont help saying that this Assembly has been summoned under special circumstances and many persons of different shades of opinion are included in it. There are many who have come here through the Provincial Assemblies and many have come from the Indian States. Even among those who come from the States there are different categories. There are some who have been nominated by the rulers, some who are self-nominated and some who are called elected representatives though there can be genuine objection against calling them elected. There are some who are themselves ruling chiefs, though small. One class is of those who are Princes and there are others who can be called Heirs-apparent. In this fashion, many different types of men have come here. Circumstances were pressing; we were invited hesitatingly and we reached here after many obstacles. I will not repeat these matters; you all know them very well. But today we have taken our seats here just like the representatives of the Provinces. I hope you do not think that we have come here as beggars, or that we have to beg against the law and the Constitution. There was a time when the fight for the country's freedom was being

*[Translation of Hindusthani speech.

fought here. In that fight the Indian States' peoples took part without any invitation and fought shoulder to shoulder with you. They did not require any invitation. Therefore today, we have not come uninvited. We are here on invitation of some sort or other, and we are here in this gathering. Now, having come in, there is a talk of serving different kinds of purposes. We may be told "Look here, friend, you can deal with three matters but you must not touch the rest, because it is against your interest. This can be said but you should not say it. You can count on us that we ourselves will stay away from that which is not proper for us to discuss. We may ourselves not take part in those things; but if that is the decision then I have nothing to ask for, from you. It is our misfortune that our rights have not been fully recognized, but if we are here by right, then no matter whether they be Rulers or Princes or Heirs-apparent, whether they are nominated (by these rulers) or self-nominated or whether they are Prime Ministers, they are all equal. They are, in no way backward, but are progressive and they also include men of action. All have come here without any distinction of caste or creed and their rights should be equal. That is my opinion.]*

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

The Honourable Dr. B. R. Ambedkar: Mr. President, the report made by the Committee obviously has received a mixed reception. Some members of the House have described it as a messy document. I do not propose to give any reply to those who have described the Report in those terms, because personally I think that the arguments advanced by them do not deserve sufficient consideration. All that I propose to do in reply is to meet some technical points which have been raised by my friend Dr. Deshmukh and Mr. Biswanath Das. Dr. Deshmukh refers to two recommendations made by the Committee. One was the recommendation relating to the permission to be granted to the Members representing the States for taking part in all the deliberations of the Committee. The second recommendation to which he referred was the recommendation in respect of the Ministers of the State to whom the Committee said it might not be desirable to permit to take part also in the proceedings of the Assembly. Dr. Deshmukh said that all that the Committee observed was logical or convenient. The Committee did not say whether this was constitutional. I am very much surprised at that question, particularly because Dr. Deshmukh happens to be a lawyer. As a matter of fact he ought to have realised that we have really no constitution at all. The Constituent Assembly is making a Constitution, and anything that the Constituent Assembly does would be constitutional (*Hear, hear*). If the Constituent Assembly say that the State representatives should not take part that would be perfectly constitutional. If the Constituent Assembly said that they should, that would also be perfectly constitutional. Therefore that sort of observation I thought was entirely misplaced. With regard to the point raised by my friend Mr. Biswanath Das, I also feel a considerable amount of surprise that he should have thought

]* Translation of Hindustani speech.

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fit to make the observations he made. If I remember correctly what he said, his observations related to two points. He said that the Committee was dividing the Constituent Assembly into two parts, that it was an indivisible body, that it was functioning as an integral, one whole. Well, I do not know whether he is not in a position to appreciate that the working of a constitution is quite different from the making of ordinary law. The distinction, it seems to me to put it in a nutshell, is that the Constituent Assembly, is not bound by the Constitution. But a Legislature is bound by the Constitution. When the Constituent Assembly functions as a legislature it would be bound by the Government of India Act as adapted under the Independence Act. Anybody would be in a position to raise a point of order. Anybody would be in a position to say whether a particular motion is *ultra vires* or *intra vires*. But such a question can certainly not arise when the Constitution Assembly is functioning as a body framing the Constitution. And I thought that was a sufficiently substantial distinction to enable us to understand notionally at any rate that the two functions were different, that the purposes were different, that the work was different and if we are intending to avoid confusion, the practical way of doing so would be to let the Constituent Assembly meet in a separate session as distinct from a legislature. He also raised some grouse against the adaptations. Now, I must frankly say that no one here is responsible for the adaptations that have been introduced in the Government of India Act, 1935.

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

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

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

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

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

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

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

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

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

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

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

The second question which my honourable friend Mr. Maitra put to me was whether the unity of administration is likely to be affected and there is likely to be a conflict in view of the fact that there may be two offices, one President presiding over the Constituent Assembly and secondly a Speaker presiding over the legislative body. What the

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Committee has said is that there is a theoretical possibility of conflict. But I take it that there need not necessarily be a conflict. In practice, it should be perfectly possible for the two offices, the President and the Speaker of the Assembly to work in union and to so arrange the timing of the Constituent Assembly as well as the legislative body in perfect order so that notwithstanding the fact that we have two offices, we need not be afraid that there would necessarily be a conflict.

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

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

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

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

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

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

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

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

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

"(i) The functions of the Assembly shall be
(a) to continue and complete the work of Constitution-making which commenced on the 9th December, 1946
(b). To function as the Dominion legislature until a legislature under the new Constitution comes into being."

The motion was adopted.

Mr. President:

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

The motion was adopted.

Mr. President:

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

The motion was adopted.

Mr. President:

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

The motion was adopted.

Mr. President:

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

The motion was adopted.

Mr. President:

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

The motion was adopted.

Mr. President:

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

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

The motion was adopted.

Mr. President:

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

The motion was adopted.

Mr. President: The question is:

That the Resolution as a whole be adopted, namely:

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

(i) The functions of the Assembly shall be—

(a) to continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and

(b) to function as the Dominion Legislature until a Legislature under the new Constitution comes into being.

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

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

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

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

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

[Mr. President]

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

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

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

The motion was adopted.

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

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

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

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

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

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Price 5 Annas

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 30th August 1947

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

SUPPLEMENTARY REPORT ON FUNDAMENTAL RIGHTS—(*contd.*)

Mr. President: We have now to take up the consideration of the Supplementary Report of the Fundamental Rights Committee.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): Sir, the House is already aware that my letter of 23rd April 1947, submitting the Report of the Advisory Committee on Fundamental Rights was considered and most of the main proposals were accepted. The report was to a certain extent incomplete because we had to consider several matters which were referred back to us, and some proposals were received direct, which had also to be considered. There were two parts of the report: one contained fundamental rights which were justiciable and the other part of the report referred to fundamental rights which were not justiciable but were directives* more or less which would be useful for the governance of the country. Now the Advisory Committee considered both these parts and completed its work. This report which I place before the House contains, first, two or three important matters regarding justiciable rights which were not finished and which were referred back to us: One is regarding clause 16 which reads—

"No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in any religious instruction that may be given in the school or to attend religious worship held in the school or in any premises attached thereto,"

meaning thereby that there should be no compulsion in religious education in schools maintained by the State or receiving public aid; and the Committee has accepted this, and recommend that the House should accept it.

Then there is clause 17, which refers to conversion. It reads—

"Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

The Committee came to the conclusion that this general clause is enough so far as fundamental rights are concerned. On further consideration this clause seemed to us to enunciate a rather obvious doctrine which it was unnecessary to include in the constitution, and we thought it better to leave it to the legislature.

Then about clause 18 (2), which reads—

"No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them."

*Appendix A.

[The Honourable Sardar Vallabhbhai J. Patel]

There was another paragraph in which it was recommended that the latter portion of the clause, namely, "nor shall any religious instruction be compulsorily imposed on them" be dropped because that is covered by clause 16.

Then we have examined the question as to whether the scope of the clause should be extended so as to include *State-aided* educational institutions also, and the Committee came to the conclusion that in the present circumstances we would not be justified in making any such recommendation.

Then the Fundamental Rights Sub-Committee in their report to us had recommended the adoption of Hindustani, written either in Devanagri or the Persian script, as the national language of the Union, but subsequently this question was held over because the matter was considered by the Union Constitution Committee: and as the Constituent Assembly is already seized of the subject, we thought it better not to deal with the subject. So we have not said anything about it, and it will be considered separately. Several other amendments were moved. We have considered them individually, and we have come to the conclusion that the fundamental rights should not be burdened with all such amendments that have been moved.

There is another part of the report which contains, in addition to justiciable rights, certain directives of State policy which, though not cognizable by any court of law, should be regarded as fundamental in the governance of the country. The provisions that the Committee have considered are included in Appendix A which is added to the Report.

The appendix which has been circulated with the Report is also with you. So I suggest that the Report be taken into consideration.

Mr. President: The Resolution is that this Assembly do proceed to take into consideration the Supplementary Report on the subject of Fundamental Rights submitted by the Advisory Committee. If any Member wishes to say anything, he may do so now.

Mr. R. K. Sidhwa (C. P. & Berar: General): Mr. President, Sir, you will remember this House passed a memorable Resolution in its first and second sessions which is popularly known as the Objectives Resolution. Out of the several good measures that are indicated therein, one is in connection with social and economic equality. While moving this Resolution the learned Pandit Jawaharlal Nehru made a memorable speech and placed before this House some ideas about which I would like to remind members just to refresh their memory. Among other things, the Resolution states—

"Wherein shall be guaranteed and secured to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law; . . ."

And while moving that Resolution he said—

"I stand for Socialism and I hope, India will stand for Socialism and that India will go towards the constitution of a Socialist State and I do believe that the whole world will have to go that way."

Sir, after this clear statement of the objectives, when the justiciable rights came before us, I was expecting to see that in our Constitution equality, social and economic, would play a prominent part. Not having found it in the justiciable rights I expected to see this in the non-justiciable rights. I searched and searched, but searched in vain. Sir, it is all very well to say that we want to give absolute power from the villages right up to the cities so that the economic conditions are so adjusted that the people, the average people may be happy and prosperous. But I may state, Sir, that however much we may try and introduce measures like the *Grama Udhar* and village Panchayats and village uplift, unless economic conditions are considered equitably, these measures are not going to prove of any use or be successful. Sir, what are the conditions today? I can tell you from experience. I have the honour to be the President of the All-India Local Bodies Association. These local bodies have been given the power, but they have not the money to spend. Therefore, they are quite helpless. Without money they cannot function. The powers that have been given to them are in no way useful to them. These are the conditions in which the Local Bodies suffer today.

While I was listening to the Union Powers Committee's Report and the items presented to the House the other day, we were making capital of strengthening the Centre with greater financial powers. But it must be admitted that the economic conditions of the Provinces are so poor that they are not in a position to give that help to the local Bodies that is necessary. The Local Bodies suffer from insufficiency of money, and when they approach the Provincial Government, the Provincial Governments express their inability to help them on the ground that the Central does not contribute them the money that is due to them. Sir, in the Local Bodies, the electricity tax, the entertainment taxes, the betting taxes, these legitimately belong to the Local Bodies but they have been appropriated by the Provincial Governments. An enquiry was set up by the various governments and it has been laid down definitely that unless contributions are made by the Provincial Governments, Local Bodies will not function successfully.

Sir, the Local Bodies are the root, the basis of our economic conditions in India and unless the better financing of the villages is properly considered and enough money is given to them, I can tell you with confidence, that we are not going to make our average citizen happy and prosperous. We may give them power. We are all anxious to give them authority; but if you do not give them money, what will they do? How can they proceed further? I expected, Sir, that at least in these non-justiciable rights—they are pious—I mean to say they are pious measures because they are non-justiciable—I expected that even in these pious measures there may be some mention about the equality of social rights. I do not for a moment suggest that our popular governments both in the Centre and in the Provinces do not care for them. They are as eager as some of us, or most of us here

[The Honourable Sardar Vallabhbhai J. Patel]

to do the right thing. But they are also confronted with the difficulties of money and I may tell you that unless financial conditions improve, they will not be able to advance in any direction or do any good for the average man of the country, whom we have been telling for ages that when we achieve freedom we shall see that the average man really gets real happiness. Sir, it is stated in the Resolution that all the citizens, men and women, have the right for an adequate means of livelihood. It is all very well to say "adequate means of livelihood." Where is that to come from? We have to make provision for that. Of course, I do admit that merely making a provision here will not achieve the end. But certainly if there is a provision to that effect it would be very difficult for the administration to overlook it.

Sir, the distribution of wealth in this country has been in such a miserable state of affairs that unless we bring them into a state of equality, conditions are not going to improve. I will give you two illustrations, real illustrations.

In a case when the head of the family died, he left nearly 11 crores of rupees for one issue to enjoy them. Fortunately or unfortunately, that issue also expired after about a year of the death of the father. The whole amount was distributed among the various members of the rich family who already possessed crores of rupees. If we had an equitable distribution of this wealth, this money would have come to the State.

I have known another family of a father with three children leaving Rs. 50 lakhs of rupees. Two sons within three years squandered their share and the third son was a miser and by speculation and other means made two crores out of his share. What kind of economy is this? In this country, Sir, there are only a few hundreds or few thousands who roll in crores, while millions have no proper food. This is the state of affairs. How are we going to improve it, unless this system of inequality of wealth which has been confined to a few people in the country is to be abolished? I am sure without imposing further burden upon the average person by various kinds of taxation, if this wealth is properly distributed, the State will have ample money to put this nation-building programme into operation very successfully. I know, Sir, our popular Members of the Government are alert and they may be looking into the matter. I don't for a moment say they are unmindful of it or they are indifferent about it. But what I would state is that a place should have been found for this provision in some part of the constitution. These non-justiciable rights are merely to adorn the pages of the constitution and to just give a little consolation, but I would prefer them to be a part and parcel of the constitution so that every citizen may be proud to state that 'Now my time has come to enjoy equality and wealth, so that I may not remain poor for all time'. That is my point. I tried to move a Resolution in the Fundamental Rights Committee and was told that it was not the proper place. So I waited. Now the proper

place has come, and I want to see provision made in the non-justiciable rights.

What I submit is that if you want to improve the socialist system of economy, then you have to nationalise your big industries, and if you want to provide proper wages to your wage-earners, and maternity and other benefits, do not think for a moment this is a stock argument which I am advancing, but I sincerely feel that the time has come for this argument to be fulfilled. We don't want the strikes. We don't like them. But every morning you get up from bed and go to the market and if you had paid 10 annas the previous day for an article, you have now to pay 12 annas or 14 annas. What will be the effect of this on the average serviceman, who depends entirely on his monthly budget? How can he adjust his budget? I submit, Sir, the whole economic structure has broken down to pieces. While we don't want these strikes, while we want more production, we should not find absolute fault with the labourers if they go on strike. The fact is they cannot make both ends meet. Prices have gone up. If you go to the bazar what is the condition? Upper class people, wealthy class of people, send their servants to the bazar; they don't know the condition. But the man who is absolutely dependent on the income he derives, he goes to the bazar himself and when he finds that he has got only Rs. 1-8-0 to spare and he has to pay Rs. 2-0-0 he becomes desperate. Conditions are getting worse and worse, and the popular Government, notwithstanding whatever difficulties might exist, have to face these facts. I know, Sir, in this very House there is a mixed variety of people—upper class people, wealthy people, lower class people and poor people, and it is not possible for us to bring in a measure of this sort in this Assembly. But as Pandit Jawaharlal has rightly said in the Resolution, the time has come when, whatever the position may be, we have to adjust according to the times and see that this wealth is evenly distributed.

Sir, I lay emphasis on this point, namely, that whatsoever objectives you may put down, whatsoever provisions you may put down, unless you provide village panchayats, notified area committees and sanitary committees with sufficient money at their disposal, not within the power of the provinces to appropriate the same, you are not going to improve the social structure of this country, which has gone down. That is the main cause of all this trouble and it requires immediate attention.

Mr. President: Will the Honourable Member now come to the point? (*Laughter.*)

Mr. R. K. Sidhwa: Mr. President, if these were not the points for insertion in the constitution, I don't know what are the points. My friends here clapped their hands when the Honourable President asks me to come to the point. I anticipated this and I said in a mixed House of this kind, it is not possible to have such a measure passed. If that is the desire of the House, that such a provision should not be made in the constitution, then let them please themselves. But

[Mr. R. K. Sidhwa]

I want to express my view. I feel strongly on this and state that the constitution ought to provide such a clause if you want this land to be happy. I shall state my view, no matter what the opinion of this House may be. Besides, it is not only my own view. It is the view of the various important bodies in this country, of which I have the honour to be the President.

I therefore suggest, Sir, but I know it may be argued that these are some of the social adjustments that are borrowed from the Russian constitution. I know there are many irreligious things in the U.S.S.R. constitution which could not be made applicable to India, but there are many good, very good points which are quite suitable to India and it is certainly in our interests that we copy some of the good things from the U.S.S.R. constitution. I want to state that any good means which would bring good results to the country I shall certainly be in favour of borrowing them. With these words, Sir, while I congratulate the Committee for bringing up this proposition, I would have preferred a clause of this nature to have been inserted. It has not been inserted but I do hope, Sir, that in the governance of this country and its administration, this view point will be borne in mind particularly that unless you change your economic conditions and improve them, you are not going to bring any kind of happiness and prosperity to this country.

Mr. B. Das (Orissa: General): Sir, when the first draft of the Fundamental Rights was discussed on the floor of this House I expressed grave doubts about Clause 3 regarding citizenship. After much discussion it was sent back for redrafting. The *Ad hoc* Committee redrafted it and it was presented to the House for acceptance by the Honourable Sardar Patel. At the time when the *Ad hoc* Committee's Report was presented I had my doubts as to whether that new draft would suit the requirements of the people of India. I accept the clause to-day. Some slight changes have also been made in the body of the text of clause 3. Sir, I would like to be assured by the Honourable Sardar Patel whether Government intend to change the laws of the Union as envisaged in the proviso of clause 3. Many things have happened since we discussed Fundamental Rights in April last. India has been divided up and Indian citizens who are born in both parts of India now can claim citizenship in either Pakistan or Hindustan. There may be families that may have a brother in Pakistan acquiring the citizenship of Pakistan while others may be citizens of India. Particularly, Sir, I find many officials and non-officials whom I always took as citizens of India, have gone to place their services, their best energies in the service of Pakistan. So it is natural that Government should legislate that everybody must declare whether he is a citizen of Pakistan or Hindustan. One would not like the best brains of India to go to Pakistan and when they come back to India will they be taken as Indians or only recognized as citizens of Pakistan because they have served after the separation in that country?

Sir, as to the other changes of the Fundamental Rights, I accept the recommendations on clause 16 and I also accept that clause 17 and sub-clause (2) of clause 18 should be deleted.

Sir, while we are talking of Fundamental Rights of the people of India, I would like to state that certain citizens, particularly in the services of the Constituent Assembly, were so unnecessarily and deplorably criticised yesterday. They have no representation on the floor of this House—it is the office of the Constituent Assembly—to reply to any charges that may be made on the floor of this House. I think it was wrong to make such statements on the floor of this House. If any member had any grievance, he ought to have approached the Staff and Finance Committee to make any enquiry about the efficiency or non-efficiency of the Constituent Assembly office. Personally I know they have discharged their onerous responsibilities with great intelligence, tact and loyalty to Independent India. They were part of the old bureaucracy and yet they came up to the high standard required of them and they have served India as faithfully and as loyally as any of us have served India. So far I record my grateful appreciation of their work and services.

Sir, I will then come to the next part of the Report which deals with the Fundamental principles of governance. My honourable friend Mr. Sidhwa had made some observations and I agree with him and regret that these pious recommendations should find no place in the Statute. I consider that the fundamental principles of governance means—Dharma of the Government—the path of duty of the Government. But we don't lay down in the Constitution Act what the Government should do and what are the responsibilities of Government to the citizens and the people of India. We say that the Government may do this and it is expected that we, members of the Constituent Assembly should be treated like children in our homes, and shout and agitate for something from the Government and then the Government, whether they may be the present Government or successor Government will legislate for the betterment of the conditions of the people of India. I am not satisfied with the opinion of the legal servants and great authorities on law in this House who interpret the functions of Government as justiciable and non-justiciable. They have said that we cannot include in the Union Constitution of India what the Government has to do for the people. I think it is the primary duty of Government to remove hunger and render social justice to every citizen and to secure social security. Sir, I am not satisfied, although portions of the Soviet Constitution or the Irish Constitution are somehow made into a jumble and included in these 12 paras, that they bring any hope to us. The teeming millions do not find any hope that the Union Constitution that will be passed two months hence will ensure them freedom from hunger, will secure them social justice, will ensure them a minimum standard of living and a minimum standard of public health. In the principles of Constitution we have approved so far, be it the Provincial Constitution or be it the Union Constitution or be it the Union Powers, I do not find anything that makes it obligatory on the Government, on the State, to discharge their obligatory duties to the people of India about common welfare and well being of the people. So, better it is that these pious clauses find their way to the Appendix and not to the main

[Mr. B. Das]

Constitution Act! It is no consolation to the people of India that they elect the Constituent Assembly which elects the Dominion Government. The Government has a corresponding obligatory duty to the people to govern them properly, to look after their social welfare and their general well-being. We have appointed yesterday a body of draftsmen to draft the Union Constitution. I hope it is not too late for the legal talents of this House to find ways and means for making it obligatory on the part of the Government to function and to exist for the welfare and well being of the people of India. Too much is made of 'justiciable' and 'non-justiciable'. I do not understand how the Irish Constitution included some of these noble principles in the body of the Constitution. If the Irish Constitution can do it, the Indian Constitution must do it. But then, Sir, we are up against a brick wall of lawyers. Legal talents are there and they rule that these are justiciable and others are non-justiciable. The result is that this House is reduced to the status of children and made to function as children. The Government, though it is democratic, must follow, they say, the precedents and the traditions of the bureaucratic Governments of the past. If it does so, it cannot effect any improvement in the social conditions of the people.

This is very alarming. We are framing our Free Sovereign Constitution. Perhaps ours is the last Constitution framed in the 20th century. One would have expected that we would have profited by the knowledge, by the suffering and by the experience of other countries. I do not want this Constitution to be drawn up to last only for a year or two. There are rumblings; there are signs of the times. And if we go by the precendents of the French Constituent Assemblies we may not achieve much. The people of France elected three successive Constituent Assemblies to draft their Sovereign Constitution and there were three successive Constitutions. The French Government, under the last Constitution, has not yet been a stable one. Our Government is expected to be stable and is stable today. But nobody can be a prophet and say that it will be stable for more than a year or two. And if I, a Gandhite, am not satisfied with this Draft, how can I expect the socialists and the communists and the others to be satisfied with it? Let us make a more acceptable draft. Let us make the draft fit in with the conditions in India. Let us tell the world through our draft Constitution that Indians have a civilization and culture, ten thousands of years old. We should draw up a democratic Constitution whereby the State serves the people and the people, the State. Let our Constitution bear the stamp of the culture and civilisation of India.

Dr. P. S. Deshmukh: (C. P. & Berar: General): Mr. President, Sir, before I speak on the motion itself I wish to suggest that, since this is the last day of the session, we might probably devote the whole day for the discussion of the principles which have been placed before us.

The House knows, Sir, that we have left many things incomplete. Many Reports have been presented to us and we have only dealt with

parts of them. A good many sections or clauses for instance of the Union Constitution Committee, the Union Powers Committee etc., have been left over for further consideration. The same, I submit, should not happen to this particular Report. This Report, in my opinion, is the most important of all, because it represents that part of the Constitution which the masses of India are looking forward to for the fulfilment of the promises made to them by their leaders. They are watching how far we are serious in our promises to ameliorate their condition and better the standard of living of the average man. From that point of view, Sir, I submit, this particular portion of the Constitution should be given more importance than the other parts and every opportunity should be given to the members to express themselves. I would further submit that the recommendations be not taken into consideration in this session if the criticism that I wish to level and many of my friends have levelled are going to have any effect on the sponsors of the measure. Only if this is done shall we be able to go to the people and tell them that we are striving to protect their interests not only temporarily but permanently.

My first criticism against the present Report is that it is, like some other reports, exceptionally perfunctory. The framers of the Report will pardon me if I use somewhat strong words. The attitude of the Members of the Committee is, I think, very correctly reflected in one of the sentences to be found in a book that has been provided by the office to us. I will read that one sentence : "Great difficulty has been experienced in selecting provisions for inclusion" of course in the draft of Fundamental Rights in the Indian constitution—as "there is no absolute standard as to what constitutes 'Fundamental Rights', and the basis of classification varies from country to country." This, it is clear has been the sole sheet-anchor of the Committee. They have delved into various books on Constitutions of the world to select a section here and an item there so as to suit the Indian conditions and conform to their ideals. I submit to you and to the House, Sir, that this is not the correct attitude to take when dealing with fundamental rights. India, our country, is totally incomparable with Ireland. What is there in Ireland, that we should bodily adopt its fundamental rights for our country? What may be useful for them may not be worthy of consideration by us. The total population of Ireland is only 29 lakhs which is the same as, if not less than the population of the State of Baroda. And what is the character of this particular Constitution which has been considered worthy of imitation? I have not seen any important book on Constitutional History or Constitutional Law bestowing any special praise on the Irish Constitution and I fail to see what there is that makes it fit to be adopted whole-sale. In my opinion the Committee viewed the whole question from an utterly wrong standpoint. Our Constitution framers appear as if they merely studied the existing Constitutions and chose what they thought would probably serve as a sop to the socialists and communists. This I think summarises and properly expresses in a nutshell what has been presented to us. They did not want in any case to go very far; but none the less they were not in a position to leave out the social and economic

[Dr. P. S. Deshmukh]

aspects of the Constitution altogether untouched. In this half-hearted manner they have dealt with it. Therefore it is that we have something that cannot be accepted by a very large section of people either here or outside.

We expected, Sir, that the Indian society would in the future be regulated on definite principles. What are the principles that have been embodied here that people have a non-justiciable right to a means of livelihood, that the pay of man and woman would be equal, that youth and childhood will be protected etc.? All these things and everyone of the items that have been put down here are a matter of common knowledge and any modern Government would be ashamed not to own what has been embodied here. It is the absolute minimum that every modern Constitution and Government must avow. We do not want the hollow avowal of the minimum. We may not insist upon the maximum also and I am prepared for a compromise; but we do not want to depend upon mere platitudes and pious wishes, because that was not what we came here to achieve. At least since the year 1942 the character of the Congress has altogether changed. The change was due to the fact that there was a solemn promise that the Government of Independent India would be that of the peasants and workers of India and none others. That was what impelled so many rural people, so many youths from the rural population to sacrifice themselves in the Revolution of 1942. If you analyse the figures you will be startled, Sir, to find that none of the vested interests, none of the erstwhile patriots sacrificed themselves. They were the purely the backward and illiterate people from the rural communities who sacrificed themselves. Very few indeed of the people from towns who belonged to any of the higher and well-known families were ready to join them. That being so, it is our duty to look to the promises that we had held out, and in considering the Report we should have kept that ideal in view and not tried merely to make half-hearted recommendations so as to be able to say to the Socialists that we are also socialists of a sort and to try to say to the Communists that we also respect some of their theories. A friend of mine said, Sir, that there was an admixture of the Russian and the Irish constitutions in these recommendations. I would like to inform my Honourable friend that he is labouring under a misapprehension. There is nothing of the Russian constitution in all these recommendations. Now what is the sanctity of these recommendations? They are supposed to be directives. Instead of having all these several items, let the framers of our Constitution give us a definite programme that they are determined to give effect to. The whole of India is thirsting for it. Instead of all that we are merely going to hold out some distant and indistinct hope without providing in our constitution any effective means as to when and how they are going to be realized. Sir, I submit that it will be far better if the framers of this Report would kindly utilize the interval between this session and the next for reconsideration of their recommendations in the light of the criticism that may be levelled against the Report on the floor of this House. We may then hope to

have something better than what we have here today unless the whole thing is to go to the Drafting Committee whether the report is fully discussed here or not. If this happens we would be required to consider the draft. But if this comes up again for our consideration in the form of a report, we hope it will be in a different shape.

Actually, Sir, these are described as fundamental rights and fundamental rights, Sir, are in my opinion primarily intended for the protection of the life, liberty and comfort of an average man. The fundamental rights idea is acually something like the principles of the Magna Charta against possible oppression either by a monarch or by some body of people who can get into the Government. My view is that in the framing of our present constitution there was not much need of having fundamental rights as such. All the principles, the inclusion of which we thought necessary and especially this portion of the fundamental rights which are merely recommendatory, it not being incumbent upon any Government to carry out, could, I submit, Sir, have been either embodied as ordinary provisions in a constitution or radically altered. What are the difficulties that we the people of India suffer from? Our difficulties and impediments are diverse. The first is the poverty of our people, then ignorance and illiteracy, then lack of food, lack of vitality, lack of morals, inhuman greed and consequent exploitation, ruthless profiteering and consequent oppression—moral, mental, social, spiritual and last but not least economic. To what extent are these fundamental rights going to protect us from this oppression, that is the question. And to what extent we can regard this as something on which we can go and remove these difficulties and reorganise our society, so that there is no poverty, there is no ignorance, no starvation, no unnecessary concentration of wealth in a few hands, etc. None of these things have been dealt with. In a word I say, Sir, they have been dealt in a deceitful manner. I understand the implication of the word 'deceitful' and yet I have no hesitation in using it. I say so, Sir, because once you have these as fundamental rights you will prohibit anybody going further than that. I wish it to be clearly understood that the intention is that not only should we not go further, but we should also prevent anybody else coming after us to go further. That is the intention behind the wording. I wish I could take the time of the House to read out and analyse the words used in every particular recommendation to prove the truth of my statement. But it is clear that the language used does not only not go far enough for the Indian situation, but the recommendations are so framed as not to permit anybody else coming after us to change the fundamentals and go ahead in a way that should be the only way that India should go. Our problems are huge, our population is big and we cannot merely sit and take portions from here and from there and especially from an Irish constitution. After all what is this Constitution? We have parts of the Irish Constitution copied out and we have three-fourths of the Government of India Act of 1935 copied out. If this is the Constitution which we are rushing through, I think there is no reason for any hurry at all. It should be remembered that we have

[Dr. P. S. Deshmukh]

got a very well considered adaptation of the Government of India Act and that should suffice for our purpose. I am sure, Sir, the representatives who have come here are such that I do not expect any Indian Assembly would contain any better people than those we have here. Sir, we have the best talent in the land assembled in this Assembly. Why not take the opportunity of fashioning something original, something that is in keeping with the genius of our people and something that will be in perfect conformity with the historical background of the ancient civilization of this land? That is my submission, Sir. I hope Honourable members will confine themselves only to general criticism of the recommendations of the Committee that we have here and I think they will do a distinct service if they do not let these recommendations be passed hurriedly. In fact when I said that the decisions taken by the House should not be binding, this was at the back of my mind. I feel that when we have the whole constitution before us, we want ourselves to have the liberty if need be of changing the whole structure.

Yesterday I said that we had not even a skeleton. Even supposing we have a skeleton closer examination will show that the skeleton is in some parts human and in others beastly. It is a skeleton which is not in keeping nor in harmony with the rest. This being the state of affairs, I submit to you, Sir, that since we are not going to meet hereafter and today is going to be the last day of our meeting, let us confine ourselves only to the general discussion of these recommendations. Passing of one or two items would not advance our cause in any way. If at all it will only damage it. And probably we may have to alter even those later on.

With these observations, Sir, I shall cut short my speech as I do not want to take too much of the time of the House especially because I spoke twice yesterday; I hope my observations will commend themselves to you and to the House.

Shri Vishwambhar Dayal Tripathi: (United Provinces: General): *[Mr. President, I welcome the report on fundamental rights, which has been presented before the House. Even though I am not satisfied with all that has been said in it, I warmly welcome some of its specific provisions. I want to invite the attention of the members of the Assembly particularly to Section 8. It has been said therein that within ten years our *Swaraj* Government will fully extend primary education to every poor man in every village. What it means is this that within ten or twelve or fifteen years, though every old and young man may not be educated, yet the Government will try to make full arrangements for the education of the children at least, and there shall not be any child in our country who shall not get an opportunity of education. I specially welcome this clause. Other clauses also are very important and they are appropriate as far as they go. I do not think that this report and its clauses are merely meant as a pious wish. I think that if we act fully according to them, there is no doubt that we will take the country a long way on the

* English translation of Hindustani speech.

road to progress. But in spite of it all, there are some clauses in it which even though appropriate, are altogether inadequate. In this connection I want to invite your attention particularly to clauses 3 and 4. There are some other provisions also which should have been included in this report but they are not there.

On examining the amendments I discover that they are coming before us in some form or other, and when we consider each clause separately the new principles involved in them will also come before us, and I hope that we will accept them only after full consideration. Once before also a report regarding fundamental rights was presented and we adopted it. It laid down justiciable fundamental rights. These principles which have been adopted in the second report are no doubt fundamental principles of administration but we cannot have them translated into action through the Courts. Our Constituent Assembly had a different status when the first report was presented. Even though we desired that it may have full powers, there were some restrictions, due to which we were unable to frame our constitution freely. But after the 15th August, although we got Dominion Status alone and not full freedom, yet the Constituent Assembly is going to frame such constitution as will bring full freedom to our country. Now the situation is very different from what it was before 15th August. Therefore it has become necessary that when the Constitution comes before us once again, we may think over the principles which we accepted earlier. The reason for this is that at that time we had several mental reservations, because of which we could not think freely. But now when the complete draft constitution comes before us, we will be able to consider it more freely. Sir, I am happy to know that yesterday you gave us permission to discuss the constitution when it comes before us and to make our suggestions. I want to draw your attention to clauses 3 and 4 in particular. Matters relating to economic rights have been mentioned there. Whatever has been said in them is appropriate but I wonder if in spite of it we will be able to accomplish the task which it is necessary for us to do. At the present juncture when we are taking over the reins of administration we have to give it serious thought. This is not merely my desire, but that of every Congressman. I think that it is the desire of every inhabitant of our country that the lot of our poor people be improved and the poor be no longer dependent on the rich. Nowadays, the rich dig wells, build *Dharamshalas* and *Gaushalas* for the poor and loudly proclaim that they are helping the poor in every way. This is a blow to the self-respect of the poor and in this manner they can never rise. The need is that the poor may realise and feel that they have also the strength to rise to the highest level and that they also have the same facilities for advancement as others have. This feeling can be roused in the poor only when we alter the fundamental principles substantially and mould our society on socialist lines. There is some indication of it in clauses 3 and 4. But these clauses have a place in all the constitutions of the world. In spite of this the poor are denied the justice that should have been extended to them.

[Shri Vishwambhar Dayal Tripathi]

Today practically in every country the poor are dependent on the rich. Therefore I am unable to say what effect these principles will have in our country.

The leaders have made many sacrifices and led a very austere life for the liberation of the country, during the last twenty-five or thirty years. In our midst, we have our Honourable President who, during his lifetime, has set an example of sacrifice before the world. Many of our leaders have also done the same and they are in our midst. We hope that in their presence justice will be done to the poor. But the Constitution that we are making today is not for the present only but for centuries to come. Therefore we should include in it the principles on the basis of which justice may be done to the poor and whether our present leaders are living or not the basic principles of the constitution may be brought in the action. We see today that even though the Government is in our hands, and the Congress has made so many sacrifices, and in spite of our efforts and desires, the influence of the capitalists is continuously increasing. Does not each one of us know that all the prominent newspapers are one by one passing into the hands of the capitalists; the chains of newspapers are coming under the control of the capitalists. If one wants to say something against capitalism, it is impossible to get it published in leading newspapers. Today the redeeming feature is that we have as our leaders those men who have spent their lives in making sacrifices and in the service of the poor. But after ten or fifteen years when these people will be advanced in age and when they will have no energy left to work, or when the ordinary people who have not made sacrifices, will come up as leaders, then, it is difficult to imagine as to what will be the condition of the country. Therefore at this time we must frame such a constitution as may prevent such a contingency.

In my opinion when we are framing a constitution for the coming generations of India, it is necessary that we should include in it *inter alia* four fundamental rights. Some of these four rights are already there in an indirect form, some are coming in the form of amendments, and some would probably come at the time when the full draft of the Constitution will be placed before us. We will put forth our suggestions at that time, but I want to speak to you here and now about the four fundamental rights which I have mentioned before.

The first basic principle of our constitution should be that the poor man should have full right to rise to the highest station in life, he should have the facilities to do so, not out of somebody's compassion, but by his own strength and the assistance of society. Very respectfully, I submit not by way of criticism but because I feel that we included many things in our constitution, laid down many principles and made an effort to solve many national and international questions, but we did not write even a word for removing the poverty of the poor. Except for goodwill, no other word is found in the whole constitution. Except for the right to vote, the poor man has not yet got any other right under the constitution. Being a representative

of the poor I am grateful for this right to vote, but this is not enough. Therefore, I submit very humbly that we should make such rules and regulations as may make it clear and necessary that when our constitution will be ready and acted upon, it will not result in the rule of a few capitalists and vested interests and they alone will not dominate the administration and the people would not be dependent on them. There are a few friends of mine who feel irritated at the very word socialism. I do not want to irritate them and in fact there is no need of irritating them by making a mention of socialism. But I simply love this word. A time will come when socialism will reign supreme both in our country as well as in the world as was remarked by Pandit Jawaharlal Nehru while speaking on the Objectives' Resolution. Even then, if there are some who feel irritated at it, I am not so petty as to use this word repeatedly to annoy my colleagues and friends. Therefore, if you dislike the word socialism, let it go, do not use it. But you must make such regulations as may prevent the domination of vested interests, capitalists and those who desire to keep the poor under subjugation. I would request you at least to prevent the capitalists and vested interests from standing for the membership of the legislature or from holding high posts or those in the Ministry. I am sorry to say so, but whatever I have said is not by way of criticism. When I go to old or New Delhi, I hear people wondering how such and such men have got into such and such committees. The public is suspecting as to whether the Constitution that is being framed is for the poor people or for vested interests. The names of those people generally appear for these committees who represent the vested interests and not of those who made tremendous sacrifices for their country during the last thirty years. I do not know what we should tell the people. We admit that up to a certain stage we may require the capitalists but it is not proper that they should wield influence under the Constitution. The country will never approve of it and I know that our leaders also who have suffered for our country do not approve of it. And if they also will not approve of it, some such provision should be included as may prevent these capitalists subsequently from gaining power. This is very necessary and it can be done in either of these two ways. You can either provide that our constitution, our future social structure will be on socialistic lines. If, however, you do not wish to use the word socialism, you can provide that you are not prepared to retain capitalism in any form, and so long as capitalism has to be retained, you may provide that no one who is engaged in profit-making can occupy high Governmental position. You can know who joins the Government with profit motive and how he takes unfair advantage of his position. You people understand the ways in which people take unfair advantage. I therefore respectfully submit that it is very necessary that we include some such provision in these fundamental rights as may be a safeguard against these dangers. Until we make such a provision, the poor people of this country will not be benefited by this constitution. Today we are engaged in fixing the salaries of Governors and Ministers and the allowances of members. But the

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greatest need at present is that of finding out ways and means to increase the income of the most lowly among the people. We have not to increase his income out of somebody's charity, but we have to make such provision as may help him in making his life happy and in increasing his income. This is the foremost and the most important task facing us. Today when we go out we find people asking us as to what place we are giving to the poor in the new constitution and what we are doing for them, and they openly point out that unless something is done for them, this constitution is useless for them.

The other thing that is necessary is that we have to make the nation strong and compact. Many things are needed to make a nation compact. The most important of them all is that there must be cultural unity amongst us. For cultural unity, among other things there should be one State language. I want to invite your attention to the speech of my learned friend Chaudhri Khaliq-uz-Zaman. When Pakistan was in the offing, he made the declaration that the language of Pakistan would be Urdu. I think that no one should have any objection to it. In one nation, there can be only one national language. It occurred to me on reading his statement that as a matter of principle it is very appropriate; and therefore it is necessary that in India too we may decide that in our country also there shall be one language. Until we decide this there is no doubt that we can strengthen neither our cultural unity nor our national unity. There has always been one culture in our country. By adopting one language we can strengthen it and thereby strengthen the Indian nation. We admit that ten to twenty thousand of our Muslim brethren came from outside but undoubtedly it is difficult to say as to who are their progeny and where they are. Nowadays about 99 per cent. Muslims, 100 per cent. Hindus, 100 per cent. Christians and 100 per cent. Sikhs are the descendants of common ancestors. Some of our Muslim brethren, may under misguidance hurl abuses at Rama and Krishna. But there is no doubt, that in the near future when conditions stabilize and this virus of ill-feeling and communalism is destroyed, every Muslim will consider Rama and Krishna as his ancestors just like Hindus. It has been a feature of the History of the World that in spite of change of religion cultural unity has remained intact. It was unfortunate that ill-will continued to grow amongst Hindus and Muslims in our country and its result was that we were continuously separated from each other. We have cultural unity and everyone has contributed towards it. Our culture has its roots in antiquity and every religious sect of our country has contributed towards it. Muslims have also made their own contribution. In the circumstances if we adopt one language as our State language we will be strengthening our culture and our nation. I am happy to know that very soon a resolution will come before you propsing that our State language be Hindi and that the script be Devnagri. I think all members of this Assembly and every man, woman, and child in the country will welcome this resolution.

The third thing, that is presently coming before you and which should also form part of fundamental rights, is very useful from the

point of view of our culture and economy. Our country has all along been predominantly agricultural and no matter how much we may expand our trade, so long as we do not become imperialistic—which we should not be—our country will undoubtedly remain agricultural. Cow-protection is very important for an agricultural country. I am happy to know that a resolution to this effect is coming before you in a very nice form, and I hope that this Assembly will adopt it unanimously. This matter too was hotly discussed. Not only from financial point of view but from cultural point of view also, I think it is necessary to make adequate arrangements for cow-protection. From both the points of view, financial as well as cultural, it is necessary and proper that we should take steps for cow-protection, and I am happy that a resolution to that effect is coming before you.

The fourth important matter has not yet come before you, but I think, that when the draft constitution including the fundamental rights will be placed before you, this also will come before you. And that is, how to make our nation strong and powerful in the shortest possible time. We do not want to attack any country of the world. We do not want that there should be any conflict in the world. But everything does not depend upon our wishes. If any country desires 50 per cent. peace, we want 100 per cent. peace and we will make all possible efforts to bring about peace in the world. This we can accomplish only when we are strong. From the point of view of population our country is the largest in the world and therefore it is our duty that we put an end to the tendencies of violence that we find in the world today. But we can stop them only when we ourselves are strong and for that it is necessary that every youngman of our country should receive military training. I want that we should make a law that every youngman of our country will receive military training unless he is physically unfit and the State should compel him to receive such training. To make the nation strong, and also to remove the indiscipline that has crept into us owing to our dependence for centuries, it is necessary that physically fit men should be conscripted and given military training.

These four things are very necessary and I confidently hope that when these matters come before you from time to time, you will consider them and the House will support them unanimously. I said at the very outset that so far as the principles contained in this report are concerned, I welcome them, but I think that they are inadequate. Until these fundamental principles are added, neither can the poor masses of the country be fully benefited nor can our country become strong. I hope that the Honourable Members of the Constituent Assembly will welcome this report and will support the inclusion of the fundamental principles stated by me.]*

With these words I welcome once again the report. *Jai Hind.*

Mr. Satyanarayan Sinha (Bihar: General): Sir, I move:

"That the question be now put."

Mr. President : The question is :

"That the question be now put."

The motion was adopted.

]* English translation of Hindustani speech.

Mrs. Renuka Ray (West Bengal: General): Sir, yesterday you said in the House that the clauses of the Report would be discussed at a later stage. Some of us have amendments, particularly to clause 16. I hope we shall have an opportunity to bring up these amendments at a later stage.

Mr. President: At present we have taken up the motion that the Report be taken into consideration and if this motion is carried, then we shall take it up clause by clause and any amendments to the clauses may be taken up at that stage. Does the mover wish to say anything in reply?

The Honourable Sardar Vallabhbhai J. Patel: I am glad the discussion is over. We had a very interesting general discussion on the Supplementary Report. The discussion on the main Report was shorter than that on the Supplementary Report. So far as the Supplementary Report is concerned, the general discussion is based on the non-justiciable rights, and on the few clauses which have been submitted in this Report about the justiciable rights there has been practically no discussion. The real prolonged discussion has been on the other part of the Report.

This Report lays down certain administrative objectives. We have already passed the main Resolution defining the objectives and therefore whether you have this prolonged debate or not is more or less an academic thing. Therefore, I suggest that the Report be taken up for consideration and when we come to the clauses, one by one, if any amendments are moved, then I may have to say something, but now I have nothing more to say except that the Report be taken into consideration.

Mr. President: The motion is:

"That the Report be taken into consideration."

The motion was adopted.

Mr. M. S. Aney (Deccan States): Sir, I want to point out that it is the general rule that when a reply is made the Member who is replied to should be present in the House to hear the reply to his attack. This is a recognised rule of debate in all legislatures.

Mr. President: I hope the Members will bear in mind this advice of an experienced legislator like Mr. Aney.

CLAUSE 16

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move clause 16:

"No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto."

We recommend this clause to be accepted by the Assembly in its present form. That is the final recommendation of the Advisory Committee. After a long discussion, considering all the amendments, we finally came to the conclusion that this is the most suitable form for incorportion into the Fundamental Rights and I move that this clause be accepted by the House.

Mr. President: I have notice of several amendments to this Clause.

Shri R. V. Dhulekar (United Provinces: General): Sir, I want to suggest a slight verbal change, that instead of the word "school" in

the clause, the words "teaching institution" may be used.

Mr. President: But you have given no notice of any such amendment?

Shri R. V. Dhulekar: No, Sir.

Mr. President: Mr. Dhulekar suggests that the words "teaching institution" may be used, in the first line of this clause, in place of the word "school". He has given no notice of any amendment.

Mr. K. M. Munshi (Bombay: General): Sir, that will enlarge the meaning. The whole idea will be changed, it may mean a college, post-graduate school, or anything. The whole idea is that this right should be restricted to a school. It is not a simple matter of changing one word by another.

Mrs. Purnima Banerji (West Bengal: General): Sir, I move:

That in clause 16, the following new paragraph be added as an explanation:—

"All religious education given in educational institutions receiving State-aid will be in the nature of the elementary philosophy of comparative religions calculated to broaden the pupils' mind rather than such as will foster sectarian exclusiveness."

The object of the clause, Sir, is, as the Mover of the Report has suggested, to prevent the students attending these schools being forced to attend the religious classes, if they do not wish to do so. With that I am in perfect agreement. But I know there are a large number of institutions which are run on religious lines and which came into the field of education much before the State came in. There are in my Province 'Maktabs' and 'Pathasalas' which perform the function of imparting education to children of school-going age. But we have seen that the religious instructions given there are of such a nature that, instead of broadening the mind of the child, they mis-educate the mind and sometimes breed a certain type of fanaticism and religious bigotry as a result of receiving education in these 'Maktabs' and 'Pathasalas'. It is a controversial point as to whether we should give any aid to denominational schools at all —I do not wish to open that subject at all because there are experts appointed for this purpose and their report is awaited and I am sure after that the legislature will enter into that subject in fuller detail. My object in moving the amendment is that the education imparted in these institutions should be restricted or controlled by the Government without any fear of interfering with anybody's religion. The curriculum should be in the control of the Government and should be of such a nature that it broadens the mind rather than create an exclusiveness. When we were discussing the Minority Rights Report, we said that our aim should be to form a united nation and we have done away with separate electorates and agreed on fundamental rights and given each the right to follow his own religion. But I do believe that however secular a State you may wish to build up, unless one member of it appreciates the religion of another member of the State, it would be impossible for us to build up a united India.

[Mrs. Purnima Banerji]

Therefore, without interfering with the religion of anybody, the State should be perfectly entitled to see that, in the formative age of the child, when he is of the school-going age, the religious instruction is controlled and that the syllabus is of such a nature that the child will develop into a healthy citizen of India, capable of appreciating each other's point of view. We may be united by political parties, but if we do not appreciate each other's religion, we shall find that instead of having really men of religion in our midst, we shall be breeding a type of exclusiveness which will be most harmful and on that type of mind, I am afraid, the future of the nation cannot be built up. With these few words, Sir, I move my amendment and I hope the House will agree with me and accept it.

Mrs. Renuka Ray : Mr. President, Sir, I move my amendment leaving out the first part, namely,—

That for clause 16, the following be substituted :—

"No denominational religious instruction shall be provided in schools maintained by the State. No person attending any school or educational institution recognised or aided by the State shall be compelled to attend any such religious instruction."

Sir, I feel that the framers of this Report did not intend to imply what this clause does imply, namely, that instruction given in schools maintained by the State or out of public funds may be of a denominational character. Surely denominational schools cannot be run by a democratic secular State. Such schools may be recognised or even aided, but as the State we envisage under the new Constitution will be secular having no State religion as such, it cannot set up denominational religious institutions as State schools. I do not want to make a long speech; I merely want to point out that if my amendment is substituted for clause 16, then this interpretation will not be possible and what this clause is intended to convey will be brought out better. I hope the House will realise the necessity of making this substitution.

Sir, even before we had freedom, the Central Advisory Board of Education decided that the education that was to be given by the State in this country should not be of a denominational character and that religious education of a denominational character was the responsibility of the community and the home to which the child belongs and not of the State. I am sure that now that we have to fashion our own destinies and we are in a position to usher in that free and democratic State for which we have striven and for which so many have sacrificed and died, it is open to us to say that we do not want to be inconsistent. We do not want to bring in an educational system whereby the education given by the State will be in direct contravention to the ideals and the interests of the State itself. I do not say that denominational religious education should not be allowed. But education given by the State should have the teaching of moral and spiritual values; it cannot by the very nature of the State be of a denominational religious character. I hope that Sardar Patel will accept this amendment, because it is not in contravention to the desire of the Committee. It merely tries to clarify the issue. The clause

as it now stands may be misunderstood to mean that we are submitting to the State having denominational educational institutions as a part of its educational programme of policy.

Mr. President: There are only two amendments of which I have notice. Both the amendments have been moved. Now, the resolution and the amendments are open for discussion.

Shri K. Santhanam (Madras: General): Sir, I strongly support the amendment moved by Shrimati Renuka Ray. I think it carries out more fully the intentions of the Sub-Committee. In our country, even in the same religion there are any number of denominations. We want the village panchayats to control education; we want the local boards to control education. In a particular village or a particular area, a particular Hindu denomination may be in a majority. We don't want Saivaites to give Saivaite instruction; the Vaishanavaites to give Vaishnavaite education; the Lingayats to give Lingayat instruction. We do not want to give even the slightest loophole for such controversies. Therefore, it is essential that all schools maintained by the State should have no religious instruction whatsoever. Let other agencies provide this instruction, if they so choose, in 'out of class' hours. That is a different thing altogether. I am not objecting to religious instruction as such, nor I am objecting even to denominational character of religious instruction, but our public institutions should be absolutely secular. They should be beyond the reach of all religious controversies. Therefore, this amendment says that where schools are maintained by the State, no denominational religious instruction shall be provided in them. It carries out the intentions of the Committee much more precisely and fully. If an institution is recognised or receives aid from public funds then there should be no compulsion. There may be religious instruction in an aided school, but where any parent of a minor or—if a student is an adult—such student does not want to attend the classes, he should not be penalised in any way. He should be allowed to absent himself from such religious instruction. I think both these clauses are fundamental and I hope that they will be unanimously accepted by the House.

Mr. H. V. Pataskar (Bombay: General): Sir, I would like to have clarification with regard to one point. The clause states: "No person attending any school". In the beginning Mr. Dhulekar suggested to replace the word "school" by "educational institution". As I understand it, the word "school" is used in a wider sense implying any class of institution where education is provided, but if it is the idea that we are going to exclude colleges, for instance, which are in one way schools where education is given, then I think what it would lead to is that in schools which are aided by Government you cannot make religious instruction compulsory, but in colleges, if we use the word 'school' in its restricted sense, you can make it compulsory. I know of some colleges in the city of Bombay where some time back this religious instruction was compulsory. So I hope the Honourable Mover will clarify this point when replying.

Mr. President: It seems to me that nobody is willing to speak on this motion or the amendment. Will Sardar Vallabhbhai Patel reply?

(B. Pocker Sahib Bahadur, Madras: Muslim, stood up.)

Mr. President: Oh, you want to speak?

B. Pocker Sahib Bahadur: Yes, Sir. I only want to say a word as regards amendment No. 34. The object of this amendment seems to be to unify all the people of this country towards one religion or something tending towards it. If that is the object, then I certainly oppose it. I must say that in some previous speech in Hindustani on the general discussion, some similar suggestion was made; of course, I have not been able to follow that and I am not proficient to deal with that. But generally, I would say that any attempt towards the unification of all religions or towards giving instruction in public schools which is intended to unify religion is fundamentally opposed to the other clauses of fundamental rights which we have passed.

Now, Sir, I would like to point that the carrying out of this amendment No. 34 will be opposed to the other clauses and it would be opposed to the Fundamental Rights upon which we have been working so far and the introduction of this amendment will create not only discontent but it will take away the very basic principles upon which this Constitution is to be built. Then, I have no objection to the amendment No. 59 but I would point out that even though no denominational religious instruction may be provided in schools maintained by the State, what we find is in all the text-books which are prescribed for the various classes in the Schools we find so many religious topics are introduced particularly topics which deal with Hindu religion or some other religion. I would like to say that subjects which deal with the moral aspects only without having any religious idea introduced may find a place but if it does find a place in the text-books, it may be from all religions alike and not from any particular religion alone.

Therefore I would oppose this amendment No. 34 and support the original clause as it stands but I would only add that there are so many educational institutions which are intended to promote some particular minorities or religious minorities because of their backwardness in the matter of education. I submit that such institutions should not be affected by this clause.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): This is rather an important matter and my preference is for the original proposition, *i.e.*, as framed by the Committee. I am in entire agreement with the mover of amendment No. 59, Shrimati Renuka Ray, whose aim is to have secular education not influenced by any kind of religious or spiritual worship or education which must be the aim. The amendment by the other lady member is somewhat controversial. What would be the fundamental education that should be given to the child would be a matter of opinion and it might lead to controversy. So,

Sir, the amendment No. 34 cannot be taken into account at all. It will do more harm than good. For, this elementary philosophy of comparative religion is very difficult to define. While as I have said I generally support the amendment of Shrimati Renuka Ray where it aims that in no State Schools there should be any religious instruction, it does not contemplate prevention of religious education being given by other recognized and aided schools. So the objective may not be the same by the amendment of Mrs. Renuka Ray. Allowing the proposition, rather the original motion, as framed by the Committee, is very sound. It may be that there are some institutions where religious education is given and some State aid may be given and if there is no compulsion that no pupil can be compelled to receive such education, there is no harm in it. It might stand. So, I think, Sir, that the clause 16 as amended and placed before us by the Committee is better and I support that.

Shriyut Rohini Kumar Chaudhury (Assam : General) : Mr. President, Sir, I rise to give my whole-hearted support to the Motion which was moved by our Honourable friend Mrs. Purnima Banerji. It is not the personality of the Mover which has promoted me to do so but I think, Sir, taking the two motions side by side, the motion which was moved by Mrs. Banerji would take us nearer to the goal of our ideal of secular education. My Honourable friend, Mrs. Renuka Ray, has made an earnest appeal to the Honourable Sardar Patel and I am sure he is not relishing the position of having to choose between either of the two amendments but, as is well known, he is capable of surmounting any difficulties, and I am sure he will get over this difficulty and give regard to the appeal of Mrs. Renuka Ray and also accept the motion made by Mrs. Banerji.

Mr. K. M. Munshi: Mr. President, Sir, my first proposition with regard to this Fundamental Right is that the words 'Public Funds' should be really 'State Funds'. Mr. Kamath's amendment was evidently lost sight of. When the original Fundamental Right was accepted, wherever the words 'Public Funds' were found, they were substituted by 'State Funds'. The object was that the money collected from public subscriptions should not be considered the same as 'State Funds'. Therefore I appeal to the Mover that this verbal change might be accepted. My second submission is with regard to the amendment moved by Mrs. Banerji. However laudable the object, the House will remember that this is a justiciable right and therefore every word of it will have to be discussed, considered and decided upon by the different High Courts and the Supreme Court in the end. Now, if Mrs. Banerji's amendment becomes law as a justiciable right, this will be the position. There is a School in which religious education is given. The first question raised by some friend or by some enterprising man will be 'Is it in the nature of elementary philosophy or comparative religions?' So the matter will have to be taken to the Supreme Court and eleven worthy judges will have to decide whether the kind of education given is of a particular religion or in the nature of elementary philosophy of comparative religion. Then, after having

[Mr. K. M. Munshi]

decided that, the second point which the learned judges will have to direct their attention to will be whether this elementary philosophy is calculated to broaden the minds of the pupils or to narrow their minds. Then they will have to decide upon the scope of every word, this being a justiciable right which has to be adjudicated upon by them. I have no doubt members of my profession will be very glad to throw considerable light on what is and is not a justiciable right of this nature. (A Member: *For a fee*) Yes, for very good fee too.

Then again they will have to consider whether a particular kind of teaching fosters sectarian exclusiveness. All this I think will require any amount of litigation before a quietus can be given to this right.

An Honourable Member: May I ask the Honourable Member whether comparative religion taught in all universities and educational centres is not narrow minded and likely to warp the minds of the pupils?

Mr. K. M. Munshi: It is not a point of order, but a question. There are no lawyers set up there to consider whether this comparative philosophy or elementary comparative philosophy taught in the educational institutions broadens the pupils' minds or not. These decisions will have to be for the whole country including the Indian States. But all these words are of a nature not capable of being interpreted in judicial terminology except by dozens of decisions and an expenditure of lakhs of rupees. Therefore I am submitting that this is more in the nature of a dictum of what may be called broad rationalistic philosophy and is not to be approached legalistically and embodied into justiciable and non-justiciable rights. To attempt to do so would lead to considerable confusion. Even if the idea is to prescribe that religious education must not be of a nature which is exclusive, then a better phraseology would have to be found.

On the merits I would like to say only one word and it is this: Educational institutions of a denominational character often give religious education. They are doing so, not for the purpose that the students will have a general knowledge of comparative philosophy but for seeing that the students who are members of a particular denomination are given education in that kind of religion. And as a matter of practice, I may assure the House that, even if this 'justiciable rights' is there, it is not going to make any difference. Supposing there is a school of a particular denomination where a particular doctrine is taught, can anyone compel that institution to impart instruction in comparative philosophy to its students? First of all, at that stage students cannot understand philosophy. But even if you compel them, the school, its teachers and even the authors can so manipulate things that at the end of the study of comparative religion, the student comes to the conclusion that that religion is the best. I know of a concrete instance. A certain denominational school taught the sacred book of that community to the classes, but at the same time lectures were being delivered in the nature of comparative study of religion. At the end of it it was taught that

theirs was by far the best. This amendment will not meet the situation. It will make it worse. I submit, it is impossible to bring this doctrine under the terms of a clause as a justiciable right. If this amendment is accepted it will work great hardship and will remain a dead letter.

Then I come to the next amendment of Mrs. Ray. As far as the first part of it is concerned, *viz.*, "No denominational religious instruction shall be provided in schools maintained by the State", as far as the Federation is concerned, it is going to be a secular and democratic State. So far as the Units are concerned, I do not think the provinces are going to be religious States. But at the present moment this Fundamental Right would not only affect the provinces, but also the States. If the Indian States are willing to accept that, it is a different matter, but it would not be right in my opinion to lay down this general principle in the present condition of India unless we are all unanimous on this point.

As regards the second sentence, I confess it is an improvement on the phraseology of Clause 16 as adopted by the Advisory Committee and for this reason: "No person attending any school maintained or receiving aid out of public funds....." Now, the word 'maintained' in the original clause may be construed as wholly maintained. Therefore Mrs. Ray's amendment would recognise this fact. If it is wholly maintained, it is different. This clause only refers to what may be called State-aided institutions. Therefore her words 'No person attending any school or educational institution recognised or aided by the State' constitute a better phraseology. I submit it should be accepted. It runs thus: "No person attending any school—'maintained' " instead of this the word 'recognised' may be inserted. The result will be: "No person attending any school recognised or receiving aid out of public funds". So it automatically puts out of its purview State institutions which are wholly financed by the State.

Now, with regard to the words "edcational institutions" I submit it enlarges the meaning of the word 'school' to a very large extent. It would create grave difficulties if it is allowed to be used. There may be *patasalas* or *madrassahs* giving religious instruction. Their express object is to give religious instruction and everywhere today these are aided by the State. Any such rigid fundamental right would have the effect that all those thousands of educational institutions will have to go out of existence.

Shri K. Santhanam: May I know why those institutions should go out of existence?

Mr. K. M. Munshi: The point is that there are schools which are intended to teach religion and every student who goes there is taught religion. *Patasalas* are not strictly educational institutions. Therefore the word 'school' has a clear meaning that meaning is that schools are institutions where primary and secondary education is given and not education of a specialized character. Therefore I submit, Sir, Clause 16 as moved will express the idea completely if two words are changed, "maintained" is altered into "recognised" and "public funds" into "State funds". That is my submission.

Mr. Debi Prosad Khaitan (West Bengal: General): I believe that 'out of' will have to be changed into 'by'. Then it will read: "No person attending a school recognised by the state".

The Honourable Sardar Vallabhbhai J. Patel: Sir, I am prepared to accept the change suggested by Mr. Munshi that instead of the word "maintained" in the clause we put the words "recognised by the State and instead of 'public funds' we put "out of State funds".

The only thing that I have to say in considering the clause is that one has to keep in mind that this is one of the justiciable rights and we must in drafting or in adapting the clauses keep in mind that this is not a clause which belongs to British India only but to the whole of the Indian Union and in adopting these clauses we have to consider the fact that it should not be such as to open the flood gates of litigation and create many difficulties afterwards. Therefore, these should be mainly general propositions under which special cases would give so much to go to the court and therefore with these changes which I am accepting I move the proposition for the acceptance of the House.

Dr. S. Radhakrishnan (United Provinces: General): Mr. President, I should like to have an elucidation. Does this term "recognised by or receiving aid from" include or exclude institutions wholly maintained, administered and financed by the State?

The Honourable Sardar Vallabhbhai J. Patel: It includes.

Mr. H. V. Pataskar: May I know if it is the idea to exclude colleges and all other higher institutions, where religious instruction may be made compulsory or is it used in the larger sense of any educational institution?

Mr. President: Mr. Pataskar wants to know whether 'school' includes colleges or not.

The Honourable Sardar Vallabhbhai J. Patel: It excludes colleges.

Mr. President: May I put the amendments to vote? The first amendment is that of Shrimati Purnima Banerji:

That in clause 16, the following new paragraph be added as an Explanation:—

"All religious education given in educational institutions receiving State aid will be in the nature of the elementary philosophy of comparative religions calculated to broaden the pupil's mind rather than such as will foster sectarian exclusiveness."

The amendment was negatived.

Mr. President: The next amendment is by Shrimati Renuka Ray:

That for clause 16, the following be substituted:—

"No denominational religious instruction shall be provided in schools maintained by the State. No person attending any school or educational institution recognised or aided by the State shall be compelled to attend any such religious instruction."

Mr. K. M. Munshi: I want to know whether the Honourable the Mover has accepted the word "recognised" in the place of 'maintained'.

Mr. President: That is in the original resolution—"maintained by the State". He has accepted that I think.

Pandit Hirday Nath Kunzru (United Provinces: General): I do not understand the exact effect of the amendment. Does the accept-

ance of the amendment by the Honourable Sardar Vallabhbhai J. Patel mean that clause 16 will relate not to schools maintained by the State but only to schools recognised by the State and aided out of state funds?

Mr. President: Mrs. Renuka Ray says she is withdrawing the amendment. I will put the original proposition.

Pandit Hirday Nath Kunzru: Sardar Vallabhbhai Patel said he would accept the amendments suggested by Mr. Munshi and I believe that if these amendments are accepted clause 16 would read as follows:—

"No person attending any school recognised by the State or receiving aid out of State funds shall be compelled etc., etc."

Is this correct?

Mr. President: I am going to put that very proposition to the House as you have just now read out.

Mr. K. M. Munshi: Instead of 'state funds' it would be better to have "recognised by or receiving aid from the State' because it cannot be recognised by State funds. That is only a matter of drafting.

Mr. President: The sentence will be:

"No person attending any school recognised by the State or receiving aid out of state funds etc."

Pandit Hirday Nath Kunzru: That is, the schools maintained by the State are excluded from the scope of this clause. This is a curious phraseology and I should like the meaning of this clause to be clearly explained. If it is the intention of the Government that denominational religious instruction might be given by the state in the State schools then that should be stated clearly so that we may make up our minds and decide how we should vote on this clause.

Mr. President: We may get over the difficulty if we put the clause in the following way: "No person attending any school recognised or maintained by the State or receiving aid out of State funds etc." Will that do?

Pandit Hirday Nath Kunzru: I think that will remove the difficulty.

Dr. S. Radhakrishnan: If the institutions which are maintained by the State are to impart denominational religious instruction then what happens to our declaration that the State is a secular institution which will not impart any instruction of any denominational kind? That is the real question. We have adhered to the first principle that the State as such shall not be associated with any kind of religion and shall be a secular institution. In other words we are a multi-religious State and therefore we have to be impartial and give uniform treatment to the different religions, but if institutions maintained by the State, that is, administered, controlled and financed by the State, are permitted to impart religious instruction of a denominational kind, we are violating the first principle of our constitution. On the other hand, if we say aided institutions may impart religious instruction, we protect the interests of the people against the violation of their religious conscience by saying that they shall not be compelled against their will

[Dr. S. Radhakrishnan]

to join classes on religion. So a distinction will have to be made between institutions maintained by the State and those institutions which are merely aided from State funds. So far as the former are concerned we cannot allow any religious instruction of a denominational character. So far as the latter are concerned, you may allow, provided you protect the rights of the minorities concerned. We have to make ourselves absolutely clear on this matter.

The Honourable Sardar Vallabhbhai J. Patel: Sir, there is some confusion. So far as any school that is entirely maintained by the State is concerned, we cannot do anything by way of introducing fundamental rights for which the remedy of taking it to the court is given. Because, this is not restricted to the British Indian portion alone; it covers the whole of India, that is the Indian Union. Therefore, if a Unit which is a State, take the case of Hyderabad, wants to maintain wholly its own school in which it wants to introduce religious education, it may compel; but we cannot give a remedy by which anybody can go to the court and say, "you will not impart religious education here". I do not think this is proper at this stage. Therefore, the wording 'recognised by or receiving aid from the State funds' is introduced.

Mr. M. S. Aney: I have one doubt, Sir. Does the word "State" mean only the Union or the Units also?

Mr. President: He wants to know whether "State" includes Units.

The Honourable Sardar Vallabhbhai J. Patel: "State" includes Units.

Shri R. V. Dhulekar: On a point of information, Sir, I would like to know whether the wording is "recognised by and receiving aid" or "recognised by or receiving aid".

The Honourable Sardar Vallabhbhai J. Patel: The word 'Or' is there.

Mr. President: Recognised by the State or receiving aid out of State funds. One or the other.

Shri R. V. Dhulekar: If the word "or" is there, that means that even denominational institutions which are wholly maintained by private funds will not be recognised by the Government at all. So, the word "or" should not be there. It should be "and". They should be recognised by the Government and aided. If they are aided, then this rule will apply. If it is maintained only by private funds, then.....

The Honourable Sardar Vallabhbhai J. Patel: Even if it is maintained by private funds, if it is recognised by the State, you cannot compel the students to have religious education.

Dr. B. Pattabhi Sitaramayya: (Madras: General): May I express a difficulty, Sir?

The Honourable Sardar Vallabhbhai J. Patel: There will be no end to the difficulties.

Dr. B. Pattabhi Sitaramayya: If you want to pass it in an ambiguous manner, there is no trouble. I see an obvious defeating of the purpose for which the amendment is made.

The Honourable Sardar Vallabhbhai J. Patel: I do not see any difficulty.

Mr. President: Mr. Munshi's amendment was introduced in the course of the discussion and there was no proper notice of it. Therefore, this question has arisen.

The Honourable Sardar Vallabhbhai J. Patel: What is the difficulty?

Dr. B. Pattabhi Sitaramayya: There are certain institutions in the provinces or States where certain benefactors have maintained whole institutions and they would like to impose certain religious instruction upon the students. We wanted to exempt them. That is all very well. Now, the object is to exclude a category of institutions maintained by a certain Province or State or private funds without any connection with the State. Very well, then, you have excluded them. Then you have included two categories of institutions: one, which is not recognised by but is receiving State aid; in that case, my argument does not apply. But, when you say recognised by or receiving aid from the State, then you have introduced two categories of institutions. One of them includes any institution recognised by the State. A State-maintained institution is a recognised one and thus becomes included, when it was meant to be excluded. Thus, the right of compulsion is taken away and the very exemption that we have given is undone; because even a State-maintained institution is a recognised one. The moment it is recognised by the State, that moment, the exemption that you have given to the State-maintained institution is taken away. Therefore, if you want to validate and affirm your exemption to the State maintained institutions, you must say, "recognised and receiving aid from the State." That creates only one category. Otherwise, the language with 'or' would include those institution which you have excluded. Let us take a little time, each person for himself, to judge what it means.

Dr. Mohan Sinha Mehta (Udaipur State): Sir, I am very glad that the Honourable Pandit Kunzru raised that point. From the explanation that has been given, it is quite obvious that what we understand was not really intended. Now we are told that an institution maintained by a State may have religious instruction compulsory. Well, Sir, that is a position about which some of us in this House have very strong feelings, and since the matter is not clear, I would strongly submit for your consideration that it be referred back to the Committee. If you accept the first sentence in Mrs. Renuka Ray's amendment and keep the rest of the original proposition, it would be all right. It will meet the point raised by my friend, Professor Radhakrishnan.....

Mr. K. M. Munshi: Are we debating the same thing over again? I think we have adopted it.

Mr. President: The difficulty is, you put in certain words in the course of the discussion, of which there was no notice to the members. The mover has accepted them and therefore the difficulty has arisen.

Dr. Mohan Sinha Mehta: The matter is of fundamental importance. There is a very real difficulty and I wish that it should be cleared before you ask us to vote on the proposition. I would remind the House that this subject was discussed at two sessions of the Central Advisory Board of Education. It is not a matter which should be treated lightly.

Pandit Hirday Nath Kunzru: Sir, may I strongly support the suggestion by Dr. Mohan Sinha Mehta. It is very desirable, in view of the importance of the subject, that this clause should be referred back to the Advisory Committee. I do not want to labour the point, but in order to show that it deals with a question of vital importance, I wish to point out that if we allow the State to give religious instruction in any school, it means that we accept the principle of a State religion and that there shall be something like an Established Church. Now, so far as I remember, Sir, during all the years that the struggle for national freedom went on, we stood for a secular State. Indeed, the earlier generation of leaders of Indian public opinion welcomed the measures taken for the disestablishment of the Protestant Church in Ireland. How can we then, Sir, consistently with our previous principles now accept a position in which the State will be in a position to give religious instruction and thus have a State religion which it is bound to protect above all other religions? Therefore, Sir, I strongly support Mr. Mohan Sinha Mehta's suggestion and I hope Sardar Vallabhbhai Patel will have no objection to that.

There are many points which have not yet been decided by this House. Provision will be made in respect of them in the Bill that will come before us and we shall then have an opportunity of arriving at a decision with regard to them. No harm will be done if we leave one more point to be discussed and decided at a later stage. Indeed I think that it is absolutely necessary, in view of the cardinal character of the question that has arisen, that we should not decide it in a hurry today. We must refer it back to the Advisory Committee if we attach any value to fundamental principles.

Mr. K. M. Munshi: Sir, it is not correct to assume that the matter did not receive consideration at the hands of the Advisory Committee or the original Fundamental Rights Committee. There are two different propositions. One proposition is that no school which is recognized by the State, whether aided by the State or not, should be such where students are compelled to take religious instruction. It is one proposition, which is embodied in this. The reason why the word "maintained" was altered to "recognised" was this: there are several schools which do not receive aid from the State and yet they are recognised schools. I know in my part of the country there are several recognised schools which send up students for various examinations, but they do not receive any aid from the State, but they are

schools all the same, and the object of substituting the word "maintained" by "recognised" was to cover all those schools, whether they receive State aid or not, but are recognised by the State. Now, so far as those schools are concerned, the proposition contained is very simple, that they shall not compel any student to receive religious instruction against his will. The second proposition, which is quite different, which has nothing to do with this clause, is the one contained in Mrs. Renuka Ray's sentence, that in schools which are controlled, owned and maintained by the State there shall be no religious education. Now these two are entirely different propositions.

Pandit Hirday Nath Kunzru: May I point out to my honourable friend that Sardar Vallabhbhai Patel said that this clause as it stood included both the categories of schools?

Mr. K. M. Munshi: But not for the purpose of excluding religious education. This only recognizes the right of the student or his parent to say "My son shall not be given any religious instruction". This is only one part of it. The other is a different proposition. We need not mix up the two. A State-maintained institution and owned by it may conceivably give religious instruction or may not. It is an entirely different subject.

The object of this clause is not to fetter the State from putting up religious schools but from insisting that every student shall be compelled to undergo religious instruction. This matter came up again and again and the Committee always held that it was not necessary to put down in fundamental rights the converse proposition. If the converse is brought before the House, it may be discussed at another time. But so far as this proposition is concerned, it stands as it is.

Mr. N. Gopalaswami Ayyangar (Madras: General): A State does not recognise its own institutions. "Recognized" has got a particular meaning.

Mr. K. M. Munshi: If a school maintains an institution, then if you want to prohibit religious instruction in it, it is an entirely independent subject. It is not covered by this clause. This clause only covers institutions which are recognized and State-aided. I see no reason why this part must be held up till the other one is decided. That other one was discussed again and again and ruled out by the Committees. It is not correct to say that neither the Fundamental Rights Committee not the Advisory Committee considered it.

Mr. Alladi Krishnaswami Ayyar: (Madras: General): In view of the difficulties that have cropped up, and I submit that they are genuine, it is necessary that the clause should receive further consideration. The way in which I put the matter is this You have got three classes of institutions: first, an institution which is maintained by the State; second, an institution which is recognized by the State; third, an institution which receives aid from the State. Now, though the subject might have been considered in a general way by the Com-

[Mr. Alladi Krishnaswami Ayyar]

mittee, and my friend Mr. Munshi is quite right in that, personally speaking I am impressed by the argument that a State being a secular institution, there are weightier reasons why religious insruction should not be forced in an institution which is wholly maintained by the State than in a merely recognized or partly aided school. Difficulties in regard to Indian States have been pointed out. If the State maintains an institution for a particular purpose, you may make an exception: for example, for imparting Sanskrit learning or training a particular class of pandits or some such thing. But generally speaking an institution maintained by the State must stand on a better footing than an institution which is recognized by the State or which is receiving aid from the State. Therefore I do think that the whole question may be reconsidered in the light of the suggestions made in the House, instead of one point being accepted, another point being left open, and another being referred to the Advisory Committee.

I do not mean to say anything different from what Mr. Munshi has said: but certain points have cropped up here. Let us consider them; they are important points, and I do think they should be remitted for reconsideration by the Advisory Committee or even by the Committee which has been set up to revise the Draft to see whether it is possible to bring in line these different classes.

The Honourable Sardar Vallabhbhai J. Patel: These difficulties arise when at the last moment pressure is being put to accept some suggestions, and then even those who make the suggestions afterwards say 'Oh, this is not what we meant'. This question was discussed in the House and the clause was referred back to the Advisory Committee. The Advisory Committee considered it in all its aspects and brought it here. Then at the last moment these changes were pressed. We said 'All right, if you think those better, we accept them'. Instead of referring back to the Advisory Committee, it would be better to refer it to a small committee of two or three people. My suggestion is that instead of referring this small matter to the whole Advisory Committee, it should be referred to a small committee, and if they make any suggestions, they can be brought forward at the next session. I do not think it is advisable to refer it back a third time to the Advisory Committee.

Shri K. Santhanam: We are not going to consider it afresh. It may be referred to the Drafting Committee.

The Honourable Sardar Vallabhbhai J. Patel: That is better.

Mr. President: Does the House wish to refer it to the Drafting Committee?

Honourable Member: Yes.

Mr. Tajamul Husain (Bihar: Muslim): The Drafting Committee will only draft. We must settle the principle.

The Honourable Sardar Vallabhbhai J. Patel: The House cannot discuss what the Drafting Committee will do.

Pandit Hirday Nath Kunzru: Mr. Patel's suggestion was better. Let us refer this to a small committee that can send its recommendations to the Drafting Committee. I think that will meet the points of view of all Members of the House.

Mr. Hussain Imam (Bihar: General): A committee appointed by the President will do. They will send their recommendations to the Drafting Committee.

Mr. President: If that is the wish of the House I do not mind.

(Interruption by a member in Hindi.)

Mr. President: The Members of the Drafting Committee are here and they have also heard the discussion, and they will get a report of this debate. I am sure they will take all points into consideration and then put forward a draft eliminating all the difficulties mentioned here.

Pandit Hirday Nath Kunzru: Is there any real difficulty in the suggestion made by Mr. Patel?

Mr. President: The House has accepted it.

Pandit Hirday Nath Kunzru: I think if Mr. Patel puts it forward strongly, the House will accept it.

Mr. President: I do not think it is necessary for him to do that. If the House accepts it I will do it.

Pandit Hirday Nath Kunzru: Let Sardar Vallabhbhai Patel put it forward strongly.

The Honourable Sardar Vallabhbhai J. Patel: I have no objection if it is referred to a committee appointed by you and that committee may send it to the Drafting Committee.

Mr. President: I will nominate four or five gentlemen who are really interested in this subject and they can send up their recommendations to the Drafting Committee.

An Honourable Member: It must come to the House!

Mr. President: Only the final report will come to the House.

Dr. P. S. Deshmukh: There are one or two things which require elucidation. If it is not necessary to take up the next item, we may discuss these one or two matters.

Mr. President: I do not know what are these matters.

The Honourable Sardar Vallabhbhai J. Patel: That may be discussed before the next session meets.

Dr. P. S. Deshmukh: We have for instance to fix the time of the next Session and other things!

Mr. President: That will not take much time.

CLAUSE 17

Mr. President: Clause 17.

"Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

The Honourable Sardar Vallabhbhai J. Patel: The Committee discussed this and there were several other suggestions made by the House and the clause was referred back to the Committee. After further consideration of this clause, which enunciates an obvious principle, the Committee came to the conclusion that it is not necessary to include this as a fundamental right. It is illegal under the present law and it can be illegal at any time.

Mr. President: Has anybody anything to say?

Shri M. Ananthasayanam Ayyangar (Madras: General): It is unfortunate that religion is being utilised not for the purpose of saving one's soul but for disintegrating society. Recently after the announcement by the Cabinet Mission and later on by the British Government, a number of conversions have taken place. It was said that power had been handed over to Provincial Governments who were in charge of these matters. This is dangerous. What has religion to do with a secular State? Our minorities are communal minorities for which we have made provision. Do you want an opportunity to be given for numbers to be increased for the purpose of getting more seats in the Legislatures? That is what is happening. All people have come to the same opinion that there should be a secular State here; so we should not allow conversion from one community to another. I therefore want that a positive fundamental right must be established that no conversion shall be allowed, and if any occasion does arise like this, let the person concerned appear before a Judge and swear before him that he wishes to be converted. This may be an out-of-the-way suggestion but I would appeal to this House to realize the dangerous consequences otherwise. Later on it may attain enormous propositions. I would like this matter to be considered and the question referred back for a final draft for consideration at a later sitting.

Shri R. V. Dhulekar: *[Mr. President, my opinion is that clause 17 should be retained as it stands. In the present environment, all sorts of efforts are being made to increase the population of a particular section in this country, so that once again efforts may be made to further divide this country. There is ample proof, both within this House and outside that many who live in this country are not prepared to be the citizens of this country. Those who have caused the division of our land desire that India may be further divided. Therefore in view of the present circumstances, I think that this clause should be retained. It is necessary that full attention should be paid to this. While on tour, I see every day refugees moving about with their children and I find them at railway stations, shops, hotels, bakeries and at numerous other places. The men of these bakeries abduct these women and children. There should be legislation to stop this. I would request you that an early move should be made to stop all this and millions of people would be saved.

I submit that we cannot now tolerate things of this nature. We are being attacked, and we do not want that India's population, the numerical strength of the Hindus and other communities should

* [English translation of Hindustani speech.

gradually diminish, and after ten years the other people may again say that "we constitute a separate nation". These separatist tendencies should be crushed.

Therefore I request that section 17 may be retained in the same form as is recommended by the Advisory Committee.

The Honourable Sardar Vallabhbhai J. Patel: Much of this debate may be shortened if it be recognised that there is no difference of opinion on the merits of the case that forcible conversion should not be or cannot be recognised by law. On that principle there is no difference of opinion. The question is only whether this clause is necessary in the list of fundamental rights. Now, if it is an objective for the administration to act, it has a place in the Second Part which consists of non-justiciable rights. If you think it is necessary, let us transfer it to the Second Part of the Schedule because it is admitted that in the law of the land forcible conversion is illegal. We have even stopped forcible education, and we do not for a moment suggest that forcible conversion of one by another from one religion to another will be recognised. But suppose one thousand people are converted, that is not recognised. Will you go to a court of law and ask it not to recognise it? It only creates complications, it gives no remedy. But if you want this principle to be enunciated as a seventh clause, coming after clause 6, in the Second Schedule, it is unnecessary to carry on any debate; you can do so. There is no difference of opinion on the merits of the case. But at this stage to talk of forcible conversion on merits is absurd, because there cannot be any question about it.

Shri R. V. Dhulekar: *[I agree that it may be transferred there.]*

The Honourable Sardar Vallabhbhai J. Patel: *[It will be transferred.]*

(At this stage Mr. Hussain Imam walked up to the rostrum to speak.)

The Honourable Sardar Vallabhbhai J. Patel: Do you advocate forcible conversion?

Mr. Hussain Imam: No, Sir, I very much regret the attitude of certain Members who are in the habit of bringing in controversial matters without any rhyme or reason. It was really a most uncalled for attack which the last speaker made on the Mussalmans, without mentioning names. But I regret that in the atmosphere which we are trying to create of amity such intrusions should be allowed to intervene and mar the fair atmosphere.

Sir, what I came to suggest was that this is such a fundamental thing, that there is no need to provide for it. According to the law everything which has been done under coercion is illegal. Anything done by reason of fraud can never stand. Forcible conversion is the highest degree of undesirable thing. But it is not proper, as the

[ ] English translation of Hindustani speech.

[Mr. Hussain Imam]

Sardar himself has admitted, to provide it in the justiciable fundamental rights. The only place which it can occupy is in the annals of High Court judgments. Any number of judgments exist which have declared that anything done by reason of fraud or coercion is illegal. Therefore it is not justifiable and cannot be justified by any sensible person in the world. I strongly advocate that it is not necessary to put it in any of the lists of Fundamental Rights.

Shri R. V. Dhulekar: *[I want to ask you whether any Hindu has embraced Islam by speeches.

Mr. President: Then I shall put the motion.

"That this should not be put in the Fundamental Rights."

The motion was adopted.

Mr. President: Then we come to Clause 18 (2).

The Honourable Sardar Vallabhbhai J. Patel: This is the last clause, that—

"No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them."

This clause was referred back to the Committee and it came to the conclusion that the last sentence is not necesary, *i.e.* "nor shall any religious instruction be compulsorily imposed on them" because it is already covered by Clause 16 which we have passed. That being dropped, I move the proposition, without that particular sentence, for the acceptance of the House.

K. T. M. Ahmed Ibrahim Sahib Bahadur (Madras: Muslim): Sir, I move that the following be added after the word "institutions" in Clause 18(2):—

"Provided that this clause does not apply to state Educational institutions maintained mainly for the benefit of any particular community or section of the people."

Sir, it is well known that there are in existence certain institutions maintained by the State, specially for the benefit of certain communities which are educationally backward, and if this clause is applied to such institutions also, the very object of establishing such institutions would be defeated. Therefore, it is necessary that, in order that the object of the establishment and maintenance of such educational institutions mainly for the benefit of that particular community may not be defeated,—this clause should not apply to them. This is a very simple proposition and I hope the House will accept it.

Shri Mohan Lal Saksena (United Provinces: General): Sir, I move that the following proviso be added to clause 18 (2):—

'Provided that no State aid shall be given to any institution imparting religious education unless the syllabus of such education is duly approved by the State.'"

I do not want to make any long speech. It is obvious that if any institution wants to impart religious education and wants to take

[ ] English translation of Hindustani speech.

State aid as well, then it is necessary that the syllabus of religious education should be approved by the State; otherwise, it should forego the aid. We know that in the name of religion all sorts of things are being taught and since the children are the trust of the State, it is necessary that before the State gives any aid, it should at least approve the syllabus of the religious instruction that is prescribed and imparted in any institution to which it gives such aid. With these words, Sir, I move.

Mrs. Purnima Banerji: Sir, my amendment is to clause 18 (2). It reads as follows :—

"That after the word 'State,' the words 'and State-aided' be inserted."

The purpose of the amendment is that no minority, whether based on community or religion shall be discriminated against in regard to the admission into State-aided and State educational institutions. Many of the provinces, *e.g.*, U.P., have passed resolutions laying down that no educational institution will forbid the entry of any members of any community merely on the ground that they happened to belong to a particular community—even if that institution is maintained by a donor who has specified that that institution should only cater for members of his particular community. If that institution seeks State aid, it must allow members of other communities to enter into it. In the olden days, in the Anglo-Indian schools, it was laid down that, though those schools were specifically intended for Anglo-Indians, 10 per cent. of the seats should be given to Indians. In the latest report adopted by this House, it is laid down at 40 per cent. I suggest Sir, that if this clause is included without the amendment in the Fundamental Rights, it will be a step backward and many Provinces who have taken a step forward will have to retrace their steps. We have many institutions conducted by very philanthropic people, who have left large sums of money at their disposal. While we welcome such donations, when a principle has been laid down that, if any institution receives State aid, it cannot discriminate or refuse admission to members of other communities, then it should be followed. We know, Sir, that many a Province has got provincial feelings. If this provision is included as a fundamental right, I suggest it will be highly detrimental. The Honourable Mover has not told us what was the reason why he specifically excluded State-aided institutions from this clause. If he had explained it, probably the House would have been convinced. I hope that all the educationists and other members of this House will support my amendment.

Mr. K. M. Munshi: Mr. President, Sir, the scope of this clause 18 (2) is only restricted to this, that where the State has got an educational institution of its own, no minority shall be discriminated against. Now, this does recognise to some extent the principle that the State cannot own an institution from which a minority is excluded. As a matter of fact, this to some extent embodies the converse proposition over which discussion took place on clause 16, namely, no minority shall be excluded from any school maintained by the State. That

[Mr. K. M. Munshi]

being so, it secures the purpose which members discussed a few minutes ago. This is the farthest limit to which I think, a fundamental right can go.

Regarding Ibrahim Sahib's amendment, I consider that it practically destroys the whole meaning and content of this fundamental right. This minority right is intended to prevent majority control legislatures from favouring their own community to the exclusion of other communities. The question therefore is: Is it suggested that the State should be at liberty to endow schools for minorities? Then it will come to this, that the minority will be a favoured section of the public. This destroys the very basis of a fundamental right. I submit that it should be rejected.

The next amendment moved by my Honourable friend Mr. Mohanlal Saksena is really irrelevant to this clause. However good it might be, it does not relate to the fundamental right we are dealing with. It says: "Provided that no State aid shall be given.....unless the syllabus.....is duly approved by the State". This clause refers only to State institutions and not to those aided by the State. The amendment seeks to control the nature of the religious education that is given in State-aided schools. Therefore, it is outside the scope of the general proposition before the House. In regard to its content also, it says "duly approved by the State". Now, the State may approve one kind of religious education for one community and may not approve for the other. It introduces an element of discrimination which would be much more dangerous than others. I therefore, submit that it should not be accepted by the House.

Then comes Mrs. Banerji's amendment. It is wider than the clause itself. As I pointed out, clauses 16 and 18 are really two different propositions. This is with regard to communities. Through the medium of a fundamental right, not by legislation, not by administrative action this amendment seeks to close down thousands of institutions in this country.

I can mention one thing in so far as my province is concerned there are several hundreds of Hindu Schools and several dozens of Muslim Schools. Many of them are run by charities which are exclusively Hindu or Muslim. Still the educational policy of the State during the Congress regime has been that as far as possible no discrimination should be permitted against any pupil by administrative action in these schools. Whenever a case of discrimination is found, the Educational Inspector goes into it; particularly with regard to Harijans it has been drastically done in the Province of Bombay. Now if you have a fundamental right like this, a school which has got a thousand students and receives Rs. 500 by way of grant from Government, becomes a State aided School. A trust intended for one community maintains the School and out of Rs. 50,000 spent for the School Rs. 500 only comes from Government as grant. But immediately the Supreme Court must hold that this right comes into operation as regards this School. Now this, as I said, can best be

done by legislation in the provinces, through the administrative action of the Government which takes into consideration suceptibilities and sometimes makes allowances for certain conditions. How can you have a Fundamental law about this? How can you divert crores of rupees of trust for some other purpose by a stroke of the pen? The idea seems to be that by placing these two lines in the constitution everything in this country has to be changed without even consulting the people or without even allowing the legislatures to consider it. I submit that looking into the present conditions, it is much better that these things should be done by the normal process of educating the people rather than by putting in a Fundamental Right. This clause is intended to be restrictive that neither the Federation nor a unit shall maintain an institution from which minorities are excluded. If we achieve this, this will be a very great advance that we would have made and the House should be content with this much advance.

Mr. Hussain Imam: I will not take more than two minutes of the time of the House. I think there is nothing wrong with the amendment which has been moved by Mrs. Banerji. She neither wants those endowed institutions to be closed, nor their funds to be diverted to purposes for which they were not intended. What she does ask is that the State being a secular State, must not be a party to exclusion. It is open to the institutions which want to restrict admission to particular communities or particular classes, to refuse State aid and thereby, after they have refused the State aid, they are free to restrict their admission of the students to any class they like. The State will have no say in the matter. Here the word 'recognize' has not been put in. In clause 16 we put the all embracing word 'recognize'. Therefore all this trouble arose that we had to refer that to a small Committee. In this clause the position is very clear. And Mr. Munshi, as a clever lawyer, has tried to cloud this. It is open to the institution which has spent Rs. 40,000 from its funds not to receive Rs. 500 as grant from the State but it will be open to the State to declare that as a matter of State policy exclusiveness must not be accepted and this would apply equally to the majority institutions as well as minority institutions. No institution receiving State aid should close its door to any other class of persons in India merely because its donor has originally so desired to restrict. They are open to refuse the State aid and they can have any restriction they like.

Mr. M. S. Aney: Sir, I am only putting this for the sake of clarification. In the Advisory Committee Report we have recommended that the last portion of this Clause, *viz.*, 'nor shall any religious instruction be compulsorily imposed upon them' be deleted and only the rest of the thing should be put to the vote of the House but the condition under which we made that recommendation was that clause 16 should be accepted by this House. That was the condition. Now what have we done? Clause 16 we have referred to a certain Committee for consideration. Under those circumstances the whole clause including the last portion that is to be deleted will have to be

[Mr. M. S. Aney]

put to the vote of the House. Is the entire clause going to be put to the vote or only the first part?

Mr. President: I think the proposal is to have the last portion excluded.

Pandit Hirday Nath Kunzru: Mr. President, I support the amendment moved by Mrs. Banerji. I followed with great interest Mr. Munshi's exposition. His view was that if we accepted the principle that educational institutions maintained by the State shall be bound to admit boys of all communities, it would be a great gain and that we should not mix up this matter with other matters howsoever important they may be. I appreciate his view point. Nevertheless I think that it is desirable in view of the importance that we have attached to various provisions accepted by us regarding the development of a feeling of unity in the country that we should today accept the principle that a boy shall be at liberty to join any school whether maintained by the State or by any private agency which receives aid from State funds. No school should be allowed to refuse to admit a boy on the score of his religion. This does not mean, Sir, as Mr. Munshi seems to think, that the Headmaster of any school would be under a compulsion to admit any specified number of boys belonging to any particular community. Take for instance an Islamia School. If 200 Hindu boys offer themselves for admission to that School, the Headmaster will be under no obligation to admit all of them. But the boys will not be debarred, from seeking admission to it simply because they happen to be Hindus. The Headmaster will lay down certain principles in order to determine which boys should be admitted. It is the common experience of every School that the number of boys seeking admission into it is much larger than can be accommodated.

Now, in order to weed out a certain number of students, the Headmaster lays down certain principles which are purely secular and educational. The Headmaster of a Hindu High School or the Headmaster of a Muslim High School will be completely free if Mrs. Banerji's amendment is accepted, to reject Musilm or Hindu boys as the case may be, because they do not satisfy the standards laid down by the respective Headmasters. I think this is a sufficient guarantee that a Headmaster will be in a position to act in accordance with the principle that all schools whether maintained or aided by the State should be open to boys of all communities and that it will not impose on him a burden which he cannot bear.

Sir, we have decided not to allow separate representation in order to create a feeling of oneness throughout the country. We have even disallowed cummulative voting because, as Sardar Vallabhbhai Patel truly stated the other day, its acceptance would mean introduction by the backdoor of the dangerous principle of communal electorates which we threw out of the front door. So great being the importance that we attach to the development of a feeling of nationalism, is it not

desirable, is it not necessary that our educational institutions which are maintained or aided by the State should not cater exclusively for boys belonging to any particular religion or community? If it is desirable in the case of adults that a feeling of unity should be created, is it not much more desirable, where immature children and boys are concerned that no principle should be accepted which would allow the dissemination, directly or indirectly, of anti-national ideas or feelings?

Sir, since the future welfare of every State depends on education, it is I think very important that we should today firmly lay down the principle that a school, even though it may be a private school, should be open to the children of all communities if it receives aid from Government. This principle will be in accordance with the decisions that we have arrived at on other matters so far. Its non-acceptance will be in conflict with the general view regarding the necessity of unity which we have repeatedly and emphatically expressed in this House.

The Honourable Sardar Vallabhbhai J. Patel: I do not propose to take any time, to the impatience of the House, in replying. I only wish to say that this is a simple non-discriminatory clause against the minorities in the matter of admission to schools which are maintained by the State. It is only a question whether that principle should be extended to such an extent as to include all schools which receive small or large aids. That question the committee considered at length and came to the conclusion that if we accepted this principle at present it would be enough and that the rest could be left to the legislature to be adopted wherever conditions were suitable. But in the Fundamental Rights to do away with this will be a big step forward. That was the view. Therefore I cannot accept this amendment at present.

Shri Mohanlal Saksena: Before you put the amendments to vote, I wish to say a few words about my amendment. Mr. Munshi has said that my amendment is not relevant. I would suggest that it should be referred to the committee appointed to consider clause 16.

The Honourable Sardar Vallabhbhai J. Patel: That is also not relevant.

Mr. President: I will first put the amendment of Mr. Ahmed Ibrahim Sahib to vote.

The question is:

"That the following be added after the word 'institution' in clause 18 (2) :—

'Provided that this clause does not apply to state Educational institutions maintained mainly for the benefit of any particular community or section of people.' "

The motion was negatived.

Mr. President: I will now put the amendment of Shrimati Purnima Banerji to vote.

The question is:

"That in Clause 18 (2) after the words 'State' the words 'and State-aided' be inserted."

The motion was negatived.

Mr. President: Next I will put the amendment moved by Shri Mohanlal Saksena to vote.

The question is:

"That the following proviso be added to clause 18 (2):—

"Provided that no State aid shall be given to any institution imparting religious education unless the syllabus of such education is duly approved by the State."

The motion was negatived.

Mr. President: I will now put the original clause to vote.

The question is:

"18(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into state educational institutions."

The motion was adopted.

Mr. President: This part of the Report is now finished. The Schedule will be taken up later.

I have to make a certain announcement before we part. Members will recollect that it was suggested that clause 16 be referred to a Sub-Committee and that Sub-Committee will report, not to this House, but to the Drafting Committee which will consider that Report; I am suggesting the names of gentlemen who seem to be interested in that particular clause.

(1) Dr. Mohan Sinha Mehta.

(2) Pandit Hirday Nath Kunzru.

(3) Mr. Hussain Imam.

(4) Dr. Radhakrishnan.

(5) Shrimati Renuka Ray.

(6) Mr. K. M. Munshi.

The Honourable Sardar Vallabhbhai J. Patel: Shall we take the second part?

Mr. President: Not now. The House will recollect that yesterday we had elections to fill up vacancies in the House Committee. Only two nominations were received and there were only two vacancies and therefore these two nominations are now accepted. Those gentlemen are declared elected. They are:—

Shriyut Omeo Kumar Das and

Shri V. C. Kesava Rao.

Then, the House has now to adjourn. Under one of the rules, the President has power to adjourn the House for only three days. This adjournment is going to be of much longer duration and this House has to authorise the President to call it whenever he considers suitable, because we expect that the Drafting Committee will prepare the report and I propose to circulate that to the Members well in advance before calling a meeting of the Assembly, so that they may study and consider the Report and then come to the meeting of the Assembly. It is not possible today to anticipate by what time the Drafting Committee's

report will be available and therefore it is not possible today to indicate even the approximate date for the meeting. I would therefore ask the House to give me leave to fix a suitable date when the Report is ready.

The Assembly agreed.

Mr. R. K. Sidhwa: Can you give us any faint idea as to when it is likely to be?

Mr. President: I won't like to commit myself to anything at this stage.

Mr. Tajamul Husain: May I know whether there will be a meeting of the Legislature in the meantime?

Mr. President: It is not for me, but for the Government.

Shri Mohanlal Saksena: Sir, I beg to move that the Assembly do stand adjourned till a date to be fixed by the President.

Mr. Tajamul Husain: I second it.

Mr. President: Mr. Mohanlal Saksena says that the House be adjourned to a date to be fixed by the President. I take it that is the wish of the House.

Honourable Members: Yes, yes.

Mr. President: The House, in accordance with this resolution, stands adjourned to a date to be fixed by me.

The Assembly then adjourned to a date to be fixed by the President.

No/CA. 24/Com/47

CONSTITUENT ASSEMBLY OF INDIA

Council House,

New Delhi, the 25th August 1947.

From

THE HONOURABLE SARDAR VALLABHBHAI J. PATEL,

CHAIRMAN, ADVISORY COMMITTEE ON MINORITIES, FUNDAMENTAL RIGHTS, ETC.

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

DEAR SIR,

In continuation of my letter No. CA/24/Com/47, dated the 23rd April 1947, I have the honour, on behalf of the committee, to submit this supplementary report on Fundamental Rights.

2. We have come to the conclusion that, in addition to justiciable fundamental rights, the constitution should include certain directives of State policy which, though not cognisable in any court of law, should be regarded as fundamental in the governance of the country. The provisions that we recommend are contained in Appendix A.

3. In para. 8 of our previous report, we had referred to the recommendation of the Fundamental Rights Sub-Committee that the right of the citizen to have redress against the State in a Court of law should not be fettered by undue restrictions. After careful consideration, we have come to the conclusion that it is not necessary to provide in the constitution for any further right in this connection than those already contained in clause 22 as accepted by the Assembly in the April-May session.

4. The Constituent Assembly had referred back to us clauses 16, 17 and 18(2) of our previous report. We have re-examined the clauses and our recommendations are as follows :—

Clause 16 : "No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.

We recommend that this clause be accepted by the Assembly in its present form.

Clause 17 : "Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

It seems to us on further consideration that this clause enunciates a rather obvious doctrine which it is unnecessary to include in the constitution and we recommend that it be dropped altogether.

Clause 18 (2): "No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instructions be compulsorily imposed on them."

We recommend that the latter portion of the clause, namely "nor shall any religious instruction be compulsorily imposed on them" be deleted in view of clause 16 above which we have recommended for retention. We recommend that the rest of the clause be adopted by the Assembly.

We have examined the question as to whether the scope of the clause should be extended so as to include State-aided educational institutions also and have come to the conclusion that in present circumstances we would not be justified in making any such recommendation.

5. The Fundamental Rights Sub-Committee in their report to us had recommended the adoption of Hindustani, written either in Devanagari or the Persian script, as the national language of the Union of India, but we had thought it to postpone consideration of the matter in April 1947. In view of the fact that the Constituent Assembly is already seized of the matter by certain recommendations of the Union Constitution Committee's report, we think it unnecessary to incorporate any provision on the subject in the list of fundamental rights.

6. We have also examined numerous amendments in the nature of new provisions, notice of which had been given by several members during the April-May session of the Assembly, and have not been able to accept any of them. Some of them relate to matters which have already been provided for either in the clauses already accepted by the Assembly or in new clauses which we have recommended in this report; and the others seem to us unnecessary or inappropriate.

Yours sincerely,

VALLABHBHAI PATEL,

Chairman.

APPENDIX A.

FUNDAMENTAL PRINCIPLES OF GOVERNANCE

PREAMBLE

1. The principles of policy set forth in this part are intended for the guidance of the State. While these principles are not cognizable by any court, they are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the State.

PRINCIPLES

2. The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice, social, economic and political , shall inform all the institutions of the national life.

3. The State shall, in particular, direct its policy towards securing—

(i) that the ownership and control of the material resources of 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 free competition shall not be allowed to result in the concentration of the ownership and control of essential commodities in a few individuals to the common detriment;

(iv) that there shall be equal pay for equal work for both men and women;

(v) that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their age and strength;

(vi) that childhood and youth are protected against exploitation and against moral and material abandonment.

4. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness, disablement, and other cases of undeserved want.

5. The State shall make provision for securing just and humane conditions of work and for maternity relief for workers.

6. The State shall endeavour to secure, by suitable legislation, economic organisation and in other ways, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

7. The State shall endeavour to secure for the citizens a uniform civil code.

8. Every citizen is entitled to free primary education, and it shall be the duty of the State to provide within a period of 10 years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of 14 years.

9. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the aboriginal tribes, and shall protect them from social injustice and all forms of exploitation.

10. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

11. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by the law of the Union to be of national importance, from spoliation, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to the law of the Union all such monuments or places or objects.

12. 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 the scrupulous respect for treaty obligations in the dealings of organised people with one another.