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Volume IV
No. 1.



Monday
14th July,
1947.

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CORRIGENDA.

In the Constituent Assembly Debates, April, 1947 Session, Volume III—

1. No. 1, dated the 28th April, 1947—

   (i) Page 364, last line, *for* 'wo' *read* 'two';

   (ii) Page 365, line 24, *for* 'n' *read* 'in'.

2. No. 2, dated the 29th April, 1947—

   (i) Page 390, line 16 from the bottom, *insert* 'a' after 'is';

   (ii) Page 401, line 5 from the bottom, *for* 'American' *read* 'America';

   (iii) Page 408, line 5 from the bottom, *for* 'Srijut Rohini Kumar Chaudhuri' *read* 'Srijut Rohini Kumar Chaudhury';

   (iv) Page 411, line 16 from the bottom, *for* 'Mr. P. S. Deshmukh' *read* 'Dr. P. S. Deshmukh';

   (v) Page 412, line 2 *for* 'mr. P. S. Deshmukh' *read* '[Dr. P. S. Deshmukh]';

   (vi) Page 416, line 24 from the bottom, *for* 'them.' *read* 'them?'

3. No. 3, dated the 30th April, 1947 —

   (i) Page 431, line 7 from the bottom, *for* 'adquiring' *read* 'acquiring';

   (ii) Page 438, first line, *for* '[Sarder Vallabhbhai Patel]' *read* '[The Hon'ble Sardar Vallabhbhai Patel]';

   (iii) Page 444, line 8 from the bottom, *delete* "," in the beginning;

   (iv) Page 446, last line *put* ',,' at the end;

   (v) Page 462, line 17 from the bottom, *for* 'one——' *read* '——one'.

4. No. 4, dated the 1st May, 1947—

   (i) Page 470, lines 21 and 24 from the bottom, *italicise* the word 'begar';

   (ii) Page 470, lines 21 and 24 from the bottom, *insert* "," *after* 'hindus' and *delete* "," at the end;

   (iii) Page 498, line 20 from the bottom, *for* 'The Hon'ble Shri Jagjivan Ram, *read* 'The Hon'ble Mr. Jagjivan Ram'.

5. No. 5, dated 2nd May, 1947—

   (i) Page 508, line 4 from the bottom, *for* 'acts' *read* 'act';

   (ii) Page 511, line 8 from the bottom, *for* 'wlil' *read* 'will';

   (iii) Page 529, line 13, *delete* ',,' in the beginning;

   (iv) Page 531, change the existing folio heading to *read* "RESOLUTION *re* LINGUISTIC AND CULTURAL PROVINCES AND THE LANGUAGE OF THE CONSTITUTION".

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 14th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock on Monday, the 14th July 1947, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER.

Mr. President: Members who have not yet presented their Credentials and signed the Register will do so now.

(The Secretary then called out the name of Haji Abdul Sathar Haji Ishaq Sait.)

Mr. Deshbandhu Gupta (Delhi): Mr. President, may I rise to a point of order?

Before the Honourable Member is called upon to sign the Register, I would like to know whether it would not be fair to this House to ask whether he still subscribes to the Two-Nation theory or not? I take it that, as a sovereign body, and in view of the Partition that has been decided upon, we should review the whole question and lay down that a Member who does not subscribe to the Objectives Resolution that has been passed cannot sign the Register.

I want your ruling, Sir.

Mr. President: An interesting point has been raised. But I do not consider it is a point of order at all. It is a question of the right of Members who have been elected to the Constituent Assembly under the procedure laid down. Any one who has been elected is entitled to sit in this House as long as he does not resign. Therefore I do not think I can prevent any Member who has been elected duly from signing the Register.

The following Members then presented their Credentials and signed their names in the Register:

Madras.

1. Haji Abdul Sathar Haji Ishaq Sait
2. B. Pocker Sahib Bahadur
3. Mahboob Ali Baig Sahib Bahadur
4. K. T. M. Ahmed Ibrahim Sahib Bahadur

Bombay.

5. The Honourable Mr. Ismail Ibrahim Chundrigar
6. Dr. B. R. Ambedkar
7. Mr. Abdul Kadar Mohammad Shaikh

West Bengal.

8. Pandit Lakshmi Kanta Maitra
9. Mr. Debi Prosad Khaitan
10. Mrs. Renuka Ray
11. Mr. Damber Singh Gurung
12. Mr. R. S. Platel
13. Mr. Prafulla Chandra Sen
14. Mr. Upendranath Barman
15. Mr. Raghib Ahsan
16. Mr. Naziruddin Ahmad
17. Mr. Abdul Hamid
18. Mr. Satish Chandra Samanta
19. Mr Suresh Chandra Majumdar
20. Mr. Basanta Kumar Das
21. Mr. Surendra Mohan Ghose
22. Mr. Arun Chandra Guha

United Provinces.

23. Chaudhri Khaliquzzaman
24. Nawab Muhammad Ismail Khan
25. Mr. Aziz Ahmad Khan
26. Begum Aizaz Rasul
27. Mr. S. M. Rizwan Allah

East Punjab.

28. The Honourable Sardar Baldev Singh
29. Diwan Chaman Lall
30. Maulana Daud Ghaznavi
31. Gyani Gurmukh Singh Musafir
32. Sheikh Mahboob Elahi
33. Sufi Abdul Hamid Khan
34. Chaudhuri Ranbir Singh
35. Chaudhuri Mohd. Hassan
36. Shri Bikramlal Sondhi
37. Prof. Yashwant Rai

Bihar.

38. Mr. Tajamul Husain
39. Mr. Saiyid Jafar Imam
40. Mr. Latifur Rahman
41. Mr. Mohd. Tahir

C. P. & Berar.

42. Kazi Syed Karimuddin

Assam.

43. Saiyid Muhammad Saadulla

STATES.

Mysore.

44. Dewan Bahadur Sir A. Ramaswamy Mudaliar.
45. Mr. K. Chengalaraya Reddy.
46. Mr. H. R. Guruv Reddy.
47. Mr. S. V. Krishnamurthi Rao.
48. Mr. H. Chandrasekharaiya.
49. Mr. Mahomed Sheriff.
50. Mr. T. Channiah.

Gwalior.

51. Mr. M. A. Sreenivasan.
52. Lt. Col. Brijraj Narain.
53. Shri Gopikrishna Vijayavargiya.
54. Shri Ram Sahai.

Baroda.

55. Mr. Chunnilal Purshottamdas Shah.

Udaipur.

56. Dr. Mohan Sinha Mehta.
56-A. Mr. A. Manikyalal Varma.

Jaipur.

57. Raja Sardar Singhji Bahadur of Khetri.

Alwar.

58. Dr. N. B. Khare.

Kotah.

59. Lt.-Col. Kunwar Dalel Singhji.

Patiala.

60. Sardar Jaidev Singh.

Sikkim & Cooch Behar.

61. Mr. Himmat Singh K. Maheshwari.

Tripura, Manipur and Khasi States.

62. Mr. G. S. Guha.

Rampur and Benares.

63. Mr. B. H. Zaidi.

Eastern Rajputana States

64. Maharaja Mandhata Singh.
65. Maharaj Nagendra Singh.
66. Mr. Gokul Bhai Bhatt.

Western India & Gujrat States

67. Col. Maharaj Shri Himmat Singhji.
68. Mr. A. P. Pattani.
69. Mr. Gaganvihari Lalubhai Mehta.
70. Mr. Bhawanjee Arjan Khimjee.
71. Khan Bahadur Pheroze Kothawala.
72. Mr. Vinayakrao B. Vaidya.

Deccan States

73. Mr. M. S. Aney.
74. Mr. B. Munavalli.

Eastern States

75. Rai Saheb Raghuraj Singh.
76. Rai Bahadur Lala Rajkanwar.
77. Mr. Sarangdhar Das.
78. Mr. Yudhisthir Misra.

Residuary Group

79. Mr. Balwant Rai Gopalji Mehta.

Mr. President: Is there any other member who has not signed the Register yet? I take it that there is no one here who has not signed the Register yet.

Shri Balkrishna Sharma: (United Provinces: General): *[Mr. President: Before you proceed to take up the business of the day I beg to put forward, with your permission, some questions for consideration. Sir, have I your permission?]*

Mr. President: *[The practice so far has been that, when any question is brought forward, it is considered whether permission to debate any matter relating to it is to be given or not. No question has been raised so far. I do not know what you intend saying. I think that permission will be given if what you intend saying is found to be proper and in order.]*

Shri Balkrishna Sharma: *[Though no question has so far been raised yet my prayer is that I may be permitted to explain my purpose, and a discussion may follow on it thereafter.]*

Mr. President: *[I do not know what you intend saying. If you had seen me and explained your purpose before, I may have given you permission. As no question has been so far raised, I do not see how I can give you the permission to speak at this moment.]*

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*[ ]*English translation of Hindustani Speech.

Shri Biswanath Das (Orissa: General): Mr. President, before you go on to the other items of the agenda I beg to invite your attention to the communique issued under the authority of Government on the decision regarding allotment of Armed Forces as per recommendations of the Sub-Committee. Sir, the decision is said to be final. It is said that it is a rough and ready division on communal basis based on the unanimous recommendation of the Armed Forces Reconstitution Sub-Committee, and it is said that this relates to allotment of ships etc., and that the requirements of each Dominion have been kept in view.

Mr. President: Mr. Das, I do not think the Constituent Assembly as such is concerned with any statement in any newspaper, at any rate, at this stage. Therefore, the question does not arise.

Shri Biswanath Das: I am only submitting to you the contents to judge the relevancy of it. This concerns important questions of division of assets of India and has made us all anxious. This is practically the Legislature and Sovereign body. This matter is agitating the minds of all people.

Mr. President: I think you are suffering under a misapprehension. We are not yet the Legislative Assembly. We are still only the Constituent Assembly as it has been functioning so far. If this were the Legislative Assembly you might perhaps bring that in. Now I do not think that question arises.

Mr. H. R. Guruv Reddy (Mysore State): On behalf of the Mysore chosen representatives, I would like to bring to the notice of the President that we have not yet been supplied with any literature, particularly the Rules of Procedure. We have made the request to the Office but we have not so far been supplied. We do like to take part in the proceedings but we are unable to take part on account of this. We request you kindly to give necessary instructions to the Office.

Mr. President: The Secretary will take note of that and do the needful.

Mr. H. J. Khandekar (C. P. and Berar: General): On a point of information, I would like to know how many Scheduled Caste members have signed from the Indian States out of those who have presented their Credentials.

Mr. President: I am afraid this office is not in a position to answer this question. Perhaps at a later time you may get full information from the Secretary.

Mr. Tajamul Husain (Bihar: Muslim): May I know from you, Sir, if any member from Sylhet is present here to-day?

Sardar K. M. Panikkar (Bikaner State): On a point of order. Is there a question time for this Constituent Assembly?

Mr. President: There is no time fixed. I have given that latitude to the members. I hope it will not be abused.

ADDRESS BY PRESIDENT

Mr. President: *[Hon'ble Members, we are meeting today after an interval of two and a half months. During this period many important events have occurred to which I believe I should refer. The most important of these was the statement of His Majesty's Government made on June, the 3rd. This statement has profoundly affected Indian politics. One of its results has been the division of India, and it has also been decided to partition two provinces. Further, as a consequence of this, discussions are taking place, so far as I know, in the Government of India and the Provinces concerned regarding the details of the Partition, and actual work relating to Partition is also proceeding. Besides this, changes in the membership of this Constituent Assembly have occurred. In place of the members who formerly represented Bengal and Punjab some new and some former members have been returned in the new elections held in these two (which have now become four) provinces. Many States which had so far kept aloof from this Assembly have now sent in their representatives. The members belonging to the Muslim League who had so far remained absent are also attending the Assembly now.

The Constituent Assembly had appointed a number of Sub-Committees. The Reports of these Sub-Committees have appeared in the Press and have also been sent to the members. These reports, as they are now ready, will be placed before the House from time to time and you will be called upon to give your considered decisions on them. One of these Sub-Committees had been appointed to draft a model Constitution for the Provinces. Another was appointed to determine and recommend to us the principle on which the Union Constitution was to be based, and to prepare a rough draft of the Union Constitution as well. A third Committee was appointed to consider and determine the powers of the Union and submit its report relating to them. The reports of all the three Committees are now ready. One of these reports has been presented to the House for consideration and the reports of the other committees will be presented in due course, and I hope that the House will take its decision on them after due consideration during this session. It is my suggestion, and I believe you will approve of it, that after the House has accepted the reports some persons may be appointed to prepare the detailed draft of the Constitution, and that a Committee be appointed to go through this draft carefully and to submit its opinion on it to this House when it meets again. The draft will then be introduced in this House for detailed consideration and acceptance. Thus the Constitution would be finalised.

Another committee known as the Advisory Committee had been appointed, but it has not completed its work. It has set up the following Sub-Committees—Minority Sub-Committee, Fundamental Rights Sub-Committee, Tribal and Excluded Areas Sub-Committee. These Sub-Committees are parts of the former. One of these Sub-Committees has submitted its report, but the reports of the other two are not ready as yet. I hope that very soon the reports of these Sub-Committees will also be submitted, so that when the Constitution is drafted these may be incorporated therein and the Constitution when finally accepted may be complete in all respects.

*[English translation of Hindustani Speech begins.

It is my hope that, if all this is done properly, we shall be able to pass the Constitution finally after due consideration in the October meeting of the Assembly. I want that the work of the Constituent Assembly should be speeded up, because, as you are aware, according to the proposed Indian Independence Bill the Constituent Assembly would also function as the Legislative Assembly, and already there are many matters pending before the Legislative Assembly which must be taken into consideration. After some time the Budget Session would also be due. Consequently, the earlier we finish the work of the Constituent Assembly the sooner we shall have the opportunity to take in hand the work of the Legislative Assembly. But I do not want that the work of the Constituent Assembly should be done in such a hurry as to spoil any part of it. Every matter will have to be decided after full consideration. In placing this programme before you it is not, in the least, my intention that we must proceed hurriedly to finish the work early, irrespective of whether its consequences are good or bad. On the other hand, you must devote so much time to each matter as you consider desirable. But if you keep in view that we have to do, sitting as the Legislative Assembly, other work also, we must finish our present work as early as possible.

I welcome all the new members, and they are many, who are present today. I hope that all of us together will finish, as early as possible, the work of the Constituent Assembly and will give a Constitution that shall be agreeable and acceptable to all.]*

Mr. H. V. Kamath (C. P. and Berar: General): *[Mr. President, could you kindly inform the House as to how many of the States representatives are elected and how many nominated?]*

Mr. President: *[I am unable to do so now. The information asked for will be supplied later on]*

ELECTION CHANGES FROM BENGAL AND PUNJAB

Shri Sri Prakasa (U. P.: General): *[Mr. President, so far as I know it was said at the time the elections to this Constituent Assembly were held that no outside authority had any control over it. I would like to be informed whether you were consulted about the changes that have taken place in Bengal and Punjab. Have these changes taken place according to the rules made by this Assembly? So far as I am aware members of this Assembly lose their membership when they submit their resignation. I would like to know if the members for Bengal and Punjab, who are no more members, lost their membership by submitting their resignation or as a result of the Viceroy's statement which led to new elections being held. If this is what has happened, and this appears to be the actual case, I would like to know your opinion on this matter and whether you consider all this proper and regular or not. We were told that once the Constituent Assembly was elected, neither any changes would be made in its constitution nor could any outsider have any authority or control over it. It appears to me that all these changes have taken place according to the statement of the Viceroy—a proceeding which is improper, unjust, illegal and contrary to the rules.]*

]*English translation of Hindustani Speech ends.
[ ] English translation of Hindustani Speech.
†[English translation of Hindustani Speech begins.

[Mr. President]

Mr. President: [Your statement that these changes are the result of the Viceroy's statement and the consequential action taken by him on it is correct. But I believe that everyone has consented to these changes being made and so also have we done. The question of invalidity, therefore, does not arise. Moreover, now no one from among the members who had been formerly elected and have now lost their membership has submitted any petition against the termination of his membership. The newly elected members are members of this Assembly and shall continue to take part in its proceedings.]*

Shri Balkrishna Sharma: *[Mr. President: I want to draw the attention of the House to a point arising out of your statement. It is this. You have in your opening statement welcomed the new members and have expressed the hope that they will make their contribution to the proceedings of this Assembly and will help in the framing of such a constitution for our India.....]*

Mr. President: *[Are you making a speech or asking a question?]*

Shri Balkrishna Sharma: *[Sir, I am asking a question.]*

Mr. President: *[Please ask the question now.]*

Shri Balkrishna Sharma: *[My question is that when you expressed this hope it must not have escaped you that the election of some members, and their number is appreciable, has been through a special procedure and that they are participating in the Assembly while putting faith in the two-nation theory.....]*

Mr. President: *[You have started making a speech; or are you asking a question?]*

Shri Balkrishna Sharma: *[Have you been given the assurance that those who have been elected on the basis of the two-nation theory, will associate in your work after renouncing the two-nation theory and co-operate in furthering the common task?]*

Mr. President: *[A similar point was raised by Shri Deshbandhu Gupta. I then said in reply that I had no authority to forbid the members who had been duly elected from attending. I have therefore asked for no assurance and no assurance has been given to me. I have accepted all those who have been duly elected as members and on this we are acting. What all of you do here will show the intentions of each and all.]*

An Honourable Member: We could not follow your reply, Sir, in Hindi.

Mr. President: The question has been put in Hindi and I have to answer it in Hindi. If any one puts a question in English I will answer it in English.

Pandit Govind Malaviya (United Provinces: General): Sir, I would like to ask a question in order to clarify a point. My Honourable friend Mr. Sri Prakasa has raised a question, *viz.* that this Constituent Assembly being a sovereign body and in view of the fact that members who had been previously elected had not resigned, how have others taken their places. You, Sir, were good enough to say that everybody seemed to have acquiesced in this position and therefore it

]* English translation of Hindustani Speech ends.
[ ]* English translation of Hindustani Speech.

was right. I want to ask you, Sir, whether the position is not this that if any parts of the country decide to go out of the country, or secede from it, as, happily or unhappily, parts of two provinces have by their own vote decided to, the members from those parts of the country no longer have the right to continue as members of this Assembly? I want to get this point clarified, for, in future, it will be very important. I submit that the moment any part of the country decides not to remain part of India, automatically it loses all rights with regard to this Assembly.

Mr. President: I take it that any member elected from a part of a Province which has seceded is not entitled to sit here; and I do not think any member like that is here.

Mr. H. J. Khandekar: What about Mr. Sidhwa?

Mr. President: Mr. Sidhwa was your representative (*laughter*), and elected by you from the C. P. and Berar.

MESSAGE FROM THE CHAIRMAN OF THE BURMA CONSTITUENT ASSEMBLY

Mr. President: We shall now go to the next item of business.

I am sure the Assembly will be glad to hear the message we have received from the Chairman of the Burma Constituent Assembly, in reply to the message that we had sent them:

"On behalf of myself and the Constituent Assembly of Burma, I desire to thank you most warmly for your very kind message of goodwill and good wishes which has been most deeply appreciated by the Constituent Assembly and the country. Such cordial greetings and sincere good wishes from you and the Members of the Constituent Assembly of India, at the outset of our deliberations, would be a source of inspiration and encouragement to us in the task of framing a Constitution for a free and united Burma. I can assure you that a free Burma will regard it as its special duty and privilege to maintain most cordial and friendly relations with your country and to make all possible contributions to the peace and happiness of the world.

May I avail myself of this opportunity to thank you and Sir B. N. Rau for all the kind help and assistance accorded to our Constitutional Adviser during his short stay at New Delhi and for the free gift of your publications which are found to be most valuable in our work?

May I also take this opportunity on behalf of the Constituent Assembly of Burma and the people of this country to send you and through you to the Members of your Constituent Assembly and the people of India our sincere good wishes for the successful conclusion of your labours and speedy realisation of your cherished aim of establishing a free and united India?" (*cheers*).

REPORT OF THE ORDER OF BUSINESS COMMITTEE

Mr. President: The next item on the Agenda is the motion to be moved by Mr. Munshi.

Mr. K. M. Munshi (Bombay: General): Sir, I beg to move the following resolution:

"Resolved that the Constituent Assembly do proceed to take into consideration the further Report* of the Order of Business Committee appointed by the Resolution of the Assembly of the 25th January, 1947."

*Appendix

[Mr. K. M. Munshi]

I have great pleasure, Sir, in moving this Report of the Order of Business Committee. As the House will see, this Report is quite different from the one submitted to the last sittings of the Assembly. Many and momentous have been the changes that have occurred in this country since the last sittings, and this Report has become necessary as a result of these changes. Some parts of the country have seceded from India and from the jurisdiction of this Constituent Assembly. By the end of this week, the British Parliament would have adopted legislation which would set India free by the 15th of August, 1947—an event for which we have been waiting for centuries; and lastly, the fetters that were imposed upon this Constituent Assembly by the plan of May 16 have fallen. These changes, therefore require that the programme of this Constituent Assembly should be reorientated in the new atmosphere to meet the new situation which has arisen.

Sir, I may take the liberty of pointing out that the May 16 Plan has now gone for all practical purposes and that we as a sovereign body are moving towards reconstructing the constitution of the future in an atmosphere of complete freedom. I will take the liberty of mentioning in greater detail the change which has been referred to in a paragraph of the Report. The plan of May 16 had one motive—to maintain the unity of the country at all costs. A strong Central Government was sacrificed by the May 16 plan at the altar of preserving the unity which many of us, after close examination of the Plan found to be an attenuated unity which would not have lasted longer than the making of it. There were two stages envisaged in the Plan of May 16. The stages were the preliminary stage and the Union Constituent Assembly stage. A number of committees, which the House was pleased to set up, struggled to get some kind of a strong Government of India, a Government worth the name, out of these difficulties, but the struggle, I am free to confess, was not very successful. As a matter of fact, very often, if I may express my own sentiment, while examining the plan of May 16 over and over again, the plan looked to me more like the parricide's bag which was invented by ancient Roman law. As you know, under the ancient criminal law of Rome, when a man committed a very heinous crime he was tied up in a bag with a monkey, a snake and a cock, and the bag was thrown into the Tiber till it sank.

The more we saw the plan the more we found the minority struggling to get loose, the sections gnawing at the vitals and we had the double majority clause poisoning the very existence. Whatever other Members may feel, I feel—thank God—that we have got out of this bag at last. We have no sections and groups to go into, no elaborate procedure as was envisaged by it, no double majority clause, no more provinces with residuary powers, no opting out, no revision after ten years and no longer only four categories of powers for the centre. We therefore feel free to form a federation of our choice, a federation with a centre as strong as we can make it, subject of course to this that

the Indian States have to be associated in this great task on a footing of the four categories of powers and such further powers as they choose by agreement to cede to the centre. Therefore, Sir, I personally am not at all sorry that this change has taken place. We have now a homogeneous country, though our frontiers have shrunk—let us hope only for the moment—and we can now look forward to going on unhesitatingly towards our cherished goal of strength and independence. And therefore the report that was submitted to the House had to be revised.

Members will be pleased to see that the bulk of the work is already done. The Provincial Constitution Committee's Report on the main structure of the constitution has been circulated to the Members of the House and it will be taken up in a day or two in due course. Then the Union Constitution Committee has already prepared a White Paper —if I may say so—on the structure of the Union Constitution and that will also be placed before the House at this sitting.

I may remind the House that the report of the Union Powers Committee was placed before the House last session. It contained the details of the powers which were implied in the four categories which were mentioned in the May 16 plan. In view of the change, these powers had to be re-examined, and a supplementary report of the Union Powers Committee will also be placed before the House for consideration. In the report it is suggested that when these principles have been accepted by the House they will be forwarded to a drafting committee appointed for the purpose which will perform the task of framing the necessary Bills for a Constitution of the Union of India.

With regard to paragraph 3 of the Report, as the House knows, several proposals for new fundamental rights have been referred back to the Advisory Committee. The Minorities Committee has still to examine several points, particularly the principles to be adopted in relation to minorities. Further, the Tribal Special Committees are at work; some of them have not completed their work and I do not know whether the work of some of them will be carried on at all. All these matters have yet to be decided by the Advisory Committee. They will go before the Advisory Committee and the report will come.

In the last sentence of paragraph 3 it is suggested that the Advisory Committee should complete its task in August and the recommendations may go straight to the Drafting Committee which will draw up the necessary provisions of the Act and then they will come before this House at a later session in the form of certain provisions of the Bill. But Mr. Santhanam has moved an amendment to this Resolution of mine which I find is favoured by a considerable section of the House. The view, which, I understand, is taken by fairly large numbers in this House, is that so far as the principles to be adopted in the constitution in relation to minorities are concerned, they should not be sent to the Drafting Committee straightaway but that they must be placed before this House at this session; and after the principles are settled they should go before the Drafting Committee for being shaped into

[Mr. K. M. Munshi]

appropriate provisions. If that is the view of the House the Resolution of Mr. Santhanam will be accepted qualifying the last sentence in paragraph 3.

Paragraph 4 of the Report suggests that the Assembly should complete its work by the end of October of this year. It is highly necessary, Sir, as you were pleased to point out that the work of Constitution-making should be completed at the earliest possible moment and that if possible by November we should complete our Constitution-making work. At one time the rules were framed on the footing that we may take longer. They dealt with the question of sections and groups and various other things. At the time the rule was framed—old Rule 63—it was intended that after the general lines of the Constitution were approved by this House they should be circulated to the members of the legislatures. It is not necessary to indulge in that elaborate procedure, first because the office of the Constituent Assembly has circularised a set of questionnaires to which replies have been given by members of the several Legislatures in this country and the opinions are therefore before the Committees. Secondly, things are moving so fast that we cannot go on at the pace at which we intended to go before. By the 15th August India will be a free and independent Dominion. We want to attain that stage as early as possible and to secure a constitution of our own which will give us the necessary strength. We must not forget the fact that in the Dominion Constitution which comes into existence on the 15th August the States' representatives have no place. We want that the Constitution of the Union therefore must come into existence at the earliest possible time. If that is so we shall have to eliminate this unnecessary procedure of circulating the decisions to the members of this House. This House is sufficiently representative of all interests and there is no reason why we should unnecessarily lengthen out the proceedings. Further, we know that this House is working under high pressure and within a limited time. For that purpose Members will find that in the Report of the Union Constitution Committee a provision has been made to this effect that within the first period of three years the constitution could be amended easily. In framing a Constitution as we are doing under great pressure, there are likely to be left several defects; and it is not necessary that we should have a very elaborate and rigid scheme for amending these provisions, in the first three years. Therefore, the point that is placed before the House by the Report is that on the one side the Advisory Committee will continue to complete its task, on the other hand the Drafting Committee will take up the Constitution Bill and by the middle or the end of October next will be ready with the Bill for being placed before the House. It is of great importance that this Constitution should be framed as early as we possibly can do it.

One other point. We have today with us the representatives of the Muslim League. I have no doubt that they are here as loyal and law-abiding citizens of India and that they will co-operate with us wholly

in framing as speedily as we can a Constitution for the Union in which we hope they will get an honoured place as a minority. Secondly, I may refer to the representatives of the States who have come here and I will make only one appeal to them. The time is very short. The report envisages the formation of the Union by the end of October or at least by the end of November. The House naturally expects the co-operation of Members and the representatives from the States as partners in this urgent work of framing a Constitution.

As regards the manner of the States coming into the Union, I am sure, whatever doubts they felt in the beginning, must have been dispelled by the way the Assembly has been working and by the statement issued a few days ago by the Honourable Sardar Vallabhbhai Patel which gives the fullest assurance to the States.

As far as the Members of the Constituent Assembly are concerned, they want the States to come in. On the basis of the May 16 Plan, I am sure the representatives from the States will be equally glad to come to an early decision.

I only want to say one thing. Time is of the essence of our activities here. We have to face the world with the determined purpose of framing a Constitution for a strong India which will be great and powerful. The world, I am afraid, is moving towards another crisis, and when that crisis comes—may it never come—it should not find us unprepared.

With these few words, I place this Report before the House for its consideration.

I have no objection whatever to accept the amendment which Mr. K. Santhanam is proposing to move.

Shri K. Santhanam (Madras: General): Sir, I beg to move:

"Add the following at the end of the motion:

'Resolved further that with the exception of para. 3, the Report be adopted and the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas be called upon to formulate at an early date and if possible before the end of this session the general principles to be adopted in the Constitution in relation to minorities for consideration and decision of the Assembly prior to their incorporation in the draft of the Constitution and when the principles are so approved, the procedure proposed in para. 3 may be followed'."

I need not say much about the need for this amendment. We all know how our minds are greatly exercised about the principles to be followed regarding the safeguarding of the rights of minorities. If they are incorporated in the Draft Constitution, we shall find ourselves greatly handicapped in changing them. There will be a great deal of heart-burning if any important changes are sought to be made after the Draft is published, circulated and even commented upon in the press and on the platform. Therefore, it is essential that, like the other principles of the Constitution, the principles regarding electorates, franchise and similar matters should first be approved and then only they should be put in the Draft.

Mr. President: Does any Member wish to speak on the motion before the House?

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I am a new-comer to this House. I find from the motion moved by Mr. K. M. Munshi that what is proposed to be taken into consideration is the 'further Report' of the Order of Business Committee. It means that there was an earlier report. We have no copy of it. This puts us under a handicap. It is very necessary for us to know what has been done already.

Secondly, we should have official copies of the May 16 Statement and also of the June 3 Statement. Although everybody has read them, we should like to have official copies of the same. Only then will it be possible for us to proceed in a systematic manner.

The Mover of the Resolution has appealed to the Members of the Muslim League to be loyal and law-abiding citizens of India. I should have thought that there was no need for any doubt whatever regarding the fact that we have come here as loyal and law-abiding citizens of India. (*Applause*). I submit with due humility that we have come here to take part in the deliberations of this House in framing a Constitution as quickly and as reasonably as we can. But we, the new-comers, require a little time to study the previous reports, the debates and other relevant papers, before we can take a useful part in the House.

Shri R. V. Dhulekar (U. P.: General): *[I agree with the Report submitted by Mr. Munshi and with what he has said regarding the work that this Constituent Assembly should have done so far. I want to speak about some matters which will come before the House. The first is that recently some changes have occurred, with the result that some have ceased to be members of the Constituent Assembly and new ones have been elected, in their place. The new members, who have come here, will take some time to understand all that we have done. Thus we have to review the work that this Constituent Assembly has done during the past six months, and so long as we do not take into consideration what has been already accomplished we cannot proceed further. We have to think over it. We find that India has now been divided into two and we have to see whether the Constituent Assembly should stick to the views it adopted at the time of its inception or whether it should change them. We have to consider that also, because there are many things which are proper at a particular time which cease to be so when the times have changed. The first thing that we have to note in the proceedings of the past few months is that we promised in the Objectives Resolution, which was moved in the House, that the people residing in India would be protected in every way and their culture, language and civilization would be fully safeguarded. We have to consider now whether the significance of these safeguards should continue to be what it was when they were accepted or it has to be altered. In my opinion it is necessary now to change our point of view and I think it necessary to amend the resolution that we have passed and also change the views expressed in discussing that resolution. At that time I raised the point that this Constituent Assembly should adopt Hindustani as its language. Now I submit that we have to reconsider the question of our language and script. The second thing that has been recorded in the Report relates to the month of October or November. It is said that this

*[English translation of Hindustani Speech begins.

Constituent Assembly will now be converted into Central Assembly and we have to consider as to what will be the position of those who are members of the Provincial Legislature and have been returned to the Constituent Assembly. Some people say that the members of Provincial Assemblies, who have come here, will be requested to go back.....]*

Mr. President: *[Mr. Dhulekar, I think you have strayed far from the matter under consideration.]*

Shri R. V. Dhulekar: *[No, Sir; I am not far from the point.]*

Mr. President: *[I have been under the impression that I was doing my job and I feel that you have strayed far from the point. The question before us is whether we accept the programme or the time-table submitted to us in this Report. You are raising too many questions and this is not the time for you to raise constitutional issues.]*

Mr. R. V. Dhulekar: *[Sir, I am sorry but I beg to point out that the programme submitted by Mr. Munshi makes the Business Committee, which is in existence, feel that no matters, such as new elections, should be brought up as might cause delay. Therefore, I suggest that the present members of the Constituent Assembly should continue till the Constitution has been framed.]*

Mr. President: *[The question as to who should continue to be its member and who should not, does not arise. The simple and straight question is whether or not you accept the time-table now submitted by the Committee. Nor is the question of language before us. Your remarks in this connection are irrelevant. What have you to say about the time-table and the other questions before the House?]*

Shri R. V. Dhulekar: *[I am sorry, but I beg to submit that it would suit the convenience of the Constituent Assembly that the existing members who have devoted all their time to it should continue till October by which time the Constitution would be ready.]*

Mr. President: *[Again the same question! I have already told you and the whole House that up to the time the members do not resign, they continue. If anybody intends to remain as a member this question will arise.]*

Shri R. V. Dhulekar: *[Sir, I am satisfied. I wish to say one word more that some opportunity should be given to the House in its present meeting to have an idea of the work already done and to be done in future. I have to say only this much.]*

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): I just want to call the attention of the House to the fact that this important amendment was not circulated to members of the House. I am not objecting to the amendment. It is an important amendment and I am in favour of it, but it is very difficult to understand it without having a copy. May I therefore request your help to see that such important amendments, as far as possible, are circulated to members in good time?

Mr. President: I entirely agree with you that all important amendments should be given notice of in due time so that members may have an opportunity of studying them.

]* English translation of Hindustani Speech ends.
[ ] English translation of Hindustani Speech.

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The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General): May I request you, Mr. President, to talk a little louder? We could not hear you even when you were speaking through the microphone.

Mr. President: I am very sorry, but nobody complained before.

The Hon'ble Pandit Hirday Nath Kunzru: We can hear you now.

Mr. President: But I don't think I have raised my voice now.

The Honourable Pandit Jawaharlal Nehru (U. P.: General): It is a matter of the distance between you and the mike.

Shri M. Ananthasayanam Ayyangar (Madras: General): I want to say a word or two about what Mr. Munshi said in moving his resolution. I do not feel very happy over what has happened, though I and others of my view have reconciled ourselves to this solution as the best in the circumstances. I am glad, Sir, that the members of the Muslim League have come here in so far as they are residents of the Union of India. I am glad too that many States have come in. I would have been gladder still if entire India had been represented here. I am really surprised that my friend, Mr. Munshi, who stood for Akhand Hindustan, is now equally supporting this solution. I personally think that the May 16 solution was the best. I am sorry that solution has been given up. But let us not gloat over what has happened. Even though what has happened is the best in the circumstances, we should all hope for the day when we will come again together. If the May 16 solution which was unanimously approved had been adhered to, the partition of Bengal, the partition of the Punjab, the secession of the North-West Frontier Province, the giving away of Sylhet, all these would have been avoided.

Mr. President: I entirely agree with you, but it is no use taking Mr. Munshi to task for that.

Mr. S. H. Prater (Madras: General): Sir, I rise to support the amendment. We are considering the principles of a new Provincial Constitution which deeply affect the position of the minorities and decisions may be taken at this session accepting these principles. I therefore propose that the Minorities Committee be given early opportunity to consider them and their views may receive due consideration by this Assembly before decisions are finally adopted. I therefore support the amendment.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I have great pleasure in supporting the amendment moved by Mr. Santhanam. While we all fully appreciate the urgency of expedition in the carrying on of our business here, I feel that it is quite impossible for the Report of the Excluded Areas Sub-Committee to be presented during this session. It has been suggested that big principles might be decided during this session. But, as it is, the Sub-Committee on Excluded Areas has yet to visit the Excluded and Partially Excluded areas of the provinces of Bihar and the United Provinces. While these two Provinces cannot possibly be visited during the rainy season, I do not

see how the Adibasi problem and the big things that are going to affect them can possibly be decided during this session, as Mr. Munshi suggests. I think as Mr. Frater has pointed out, it is very necessary that no 'section'—I regret I have to use the word 'section'—no portion of people of this Union should be left out when matters which vitally affect them are being considered. I wish only to point out that the Report of the Tribal Sub-Committee cannot possibly be ready till the end of August.

Mr. Aziz Ahmad Khan (U. P. : Muslim): *[Honourable President, I oppose the Resolution which has been moved by Mr. Munshi and support the amendment. Sir, I agree with you, that as in the process of this glorious task we have to solve scores of important problems, it does not behove us that we should conclude the proceedings in haste without considering them thoroughly. Sir, you have said that we should remember that the time at our disposal is short and work is long, but at the same time, we should keep in mind that we have to frame the constitution of India with due care. Contrary to this, I find in this Resolution that the Mover is of opinion that the Reports of the three Committees, which are extremely important, need not be submitted to this Assembly even after their completion. Accordingly, they are inserting the sections in the Constitution of India. The Resolution runs thus:

"We propose accordingly that the Assembly authorise the President to summon a session sometime in October, preferably in the early part of this month, for the purpose of considering the Draft Constitution."

Sir, so far as Fundamental Rights are concerned, we ought to get an opportunity to express our opinion after careful consideration and then to hand over our suggestions to the framers of the Constitution.]*

Mr. President: *[So far as Fundamental Rights are concerned, the Constituent Assembly has considered them very carefully. Now, only the Reports of Minority Committee and Tribal Areas Committee remain to be considered.]*

Mr. Aziz Ahmad Khan: *[If this is so, I think the wording of the resolution is wrong, because in the original resolution the Committee on Fundamental Rights has been clearly mentioned. So far as the Committee on Tribal Areas is concerned I think, in the present circumstances, perhaps that would be almost useless. Why will it be useless? You know the reason better. But before the Minorities Committee Report is inserted in the Constitution, it is desirable that it should be placed before the Constituent Assembly and we should get the fullest opportunity to discuss it and after we have given our best thought to it, it should be drafted in accordance with the procedure laid down in this connection. Therefore, as the Honourable President in his inaugural address has pointed out, in these matters we should not be in such a hurry as to make a mess of the whole thing. Taking my stand on this, I oppose this resolution and support the amendment.]*

Dr. Mohan Sinha Mehta (Udaipur State): Sir, I understood from Mr. Munshi's speech—I may be wrong—that he had anticipated and accepted Mr. Santhanam's amendment.

Mr. President: Mr. Munshi had said that he had already accepted the suggestion of Mr. Santhanam. Although he had not formally moved the amendment. Mr. Munshi has already accepted the amendment.

[ ] English translation of Hindustani Speech.

The Honourable Pandit Jawaharlal Nehru: *[Mr. President, I have listened attentively to all the speeches that have been made hitherto, but I fail to understand why so many speeches have been made on this subject. Unfortunately, I could not follow even Mr. Munshi's speech. In any case, it is a simple matter that we must determine our future programme and the principles involved therein. We are not concerned with whether the work is finished in this session or the next. But we must have a concrete plan before us. Mr. Munshi has now put a plan before us, and we have to take a decision on it. After all what is the debate about? We will try to finish as much work as we can during this session and take up the remainder in October or November.]*

Mr. Mahomed Sheriff (Mysore State): *[Mr. President, I endorse what has been said by Maulvi Aziz Ahmad. He has stated in his speech that no resolution, no law, and no plan can be of much use without granting adequate and satisfactory safeguards to the minorities. The principle to which the Maulvi Saheb has drawn your attention is very important. You know that if the resolution is accepted, an atmosphere of opposition and mistrust will be created among the minorities. So it is better to decide it (the minority question) at our earliest. So long as we do not find its solution, I think it would be premature to support the resolution. I, therefore, oppose this resolution and fully support the position taken up by Aziz Ahmed Saheb.]*

Shri Sri Prakasa: Mr. President, will you please read out the amendment again?

Mr. President: The amendment moved by Mr. Santhanam runs thus: This is to be added at the end of the motion.

"Resolved further that with the exception of para. 3 the Report be adopted and the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas be called upon to formulate at an early date and if possible before the end of this session the general principles to be adopted in the constitution in relation to minorities for consideration and decision of the Assembly prior to their incorporation in the draft of the Constitution and when the principles are so approved, the procedure proposed in para. 3 may be followed."

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. President, first of all, I must confess the disability under which I am suffering, namely that I have not been able to follow most of the proceedings which have taken place, to the extent to which they are in languages other than English. Therefore, I would appeal to the President to make provision for rendering into English the proceedings that take place here. Otherwise, it would be very difficult for us to follow and participate in the proceedings. No doubt, I do agree that it is necessary to have a common language, a *lingua franca*, a national language. I agree with all that. But we have to take facts as they are. As the Constituent Assembly is now constituted, it consists of members who are acquainted with various languages. All of us know that all the members of this Assembly are not familiar either with Hindi or with Urdu. There may be some members who are not familiar with English. But I take it that most of the members are familiar with English and therefore it would be a very useful procedure if the President finds his way to make the proceedings known to us all.

[ ] English translation of Hindustani Speech.

Now, Sir, as regards the proposition before the House, befcre dealing with that subject itself, I would like to say just one word as to the circumstances under which we the Muslim League Members have come here and have decided to participate in these proceedings. Now, Sir, you will agree that we have met here after an unprecedented event in the history of the world, namely the securing of independence for both India and for Pakistan without shedding a drop of blood.

Many Honourable Members: No. No.

B. Pocker Sahib Bahadur: I know quite well that there are several members. . . . . .

Mr. Debi Prosad Khaitan (West Bengal: General): I rise to a point of order. I submit the speech of the Honourable Member is absolutely irrelevant to the proposition before the House. I would submit, Sir, that he should be asked to restrict himself to the motion before the House.

Mr. President: I would ask Honourable Members to leave that part of the task to me.

B. Pocker Sahib Bahadur: I know the feeling, Sir, perhaps a very painful feeling in many quarters, that what was known as India before has been reduced in extent and another kingdom namely Pakistan has been. . . . . .

Mr. President: Will you please confine yourself to the motion before the House?

B. Pocker Sahib Bahadur: Sir, why I referred to that fact is only this. We have met here now after an event which has no precedent in the history of the world.

We are all very glad that we have met here and I congratulate Mr. Munshi for the excellent speech and for the excellent spirit in which he made it,—a speech which will be conducive to the united work of all the people concerned. I am very sorry to note that another Honourable Member has made a note of discord in his speech and I do believe that it was not quite wise on his part to have done so. We have to take the facts as they are and I may say that, so far as division is concerned, it is a matter of agreement between the two important bodies, the two great organisations in this country, namely, the Congress and the League. Both the organisations having agreed to the division, there is nothing to cry over.

Mr. President: May I remind the Honourable Member to confine himself to the motion before the House? I am afraid he has gone much beyond that.

B. Pocker Sahib Bahadur: I am only dealing with the point that has been dealt with by Mr. Munshi and referring to the reply given by another Honourable Member. If I am out of order in these circumstances, certainly I bow to your ruling and I do not want to say anything further. I have only made a reference to that. Mr. Munshi made an appeal to the members of the Muslim League to be loyal citizens of India and to co-operate. Certainly this assurance has been there and the Muslim League members will be loyally co-operating with this Constituent Assembly and they also expect a responsive co-operation from the other side.

[B. Pocker Sahib Bahadur]

Now, Sir, so far as the resolution before the House is concerned, certainly the resolution has to be carried. As regards the amendment of Mr. Santhanam, I wholeheartedly support it.

Many Honourable Members: The question be now put.

The Honourable Pandit Govind Ballabh Pant (U. P.: General): I was going to move that the question be now put.

Mr. President: I accept that motion. I think the House does not want any further discussion.

I put Mr. Santhanam's amendment to the House.

The amendment was adopted.

Mr. President: The motion, as amended, is put to the House.

The motion, as amended, was adopted.

AMENDMENT OF RULES

Mr. President: The next item is a series of resolutions relating to amendment of the Rules of the Constituent Assembly. I will ask Mr. Munshi to move.

Mr. K. M. Munshi: Mr. President, Sir, the amendments which I have the honour to move on behalf of the Steering Committee really follow the lines which have been adopted in the Report. With your permission, Sir, I will take Rule by Rule. Sir, I move:

"That the following amendments to the Constituent Assembly Rules be taken into consideration:

'*Rule 2*:—In clause (b), *delete* the words 'Sections or'. *Delete* clause (f)'."

Mr. President: Does anyone wish to say anything? I put this motion which has been moved by Mr. Munshi.

(At this stage some members stated that they had not been supplied with copies of the Rules of Procedure).

I am told that copies have been sent to the addresses of the members but still such copies as are available in the office will be supplied to the new members.

Mr. Sarangdhar Das (Eastern States Group 1): We might take up the discussion tomorrow.

Diwan Bahadur Sir A. Ramaswami Mudaliar (Mysore State): Sir, I would like to support the suggestion that the Rules may be taken up tomorrow for consideration.

Mr. President: The amendments are of a formal character. But if members want it tomorrow, I am afraid I shall have to adjourn the House. We can take up the Resolutions. As there is some objection on the part of some members that they have not got copies of the Rules of the Assembly and they would like to have them before the amendments are moved, I am afraid there is no option but to adjourn discussion of the Rules till tomorrow. There are certain other motions that we can take up.

ELECTION OF MEMBERS TO COMMITTEES

Mr. President: The next is regarding the election of Vice-Presidents. It cannot be taken up to-day because it is consequent upon a change in the Rule. So that also will have to be put off till we pass the amendments to the Rules.

Mr. Satyanarayan Sinha will move the next Motion.

Dr. B. Pattabhi Sitaramayya (Madras: General): To say that two Vice-Presidents will be elected is not opposed to the Rule. We may proceed to do that.

Mr. President: We can take that up later.

Mr. Satyanarayan Sinha (Bihar: General): The motion which stands in my name, Mr. President, is of a formal character:

"Resolved that this Assembly do proceed to elect, in the manner required under Rule 42(1) of the Constituent Assembly Rules, two members to be members of the Staff and Finance Committee."

You know, Sir, last time we had elected the Staff and Finance Committee by this House. Since then some of the members who were originally elected cease to be members of this House and under the Rules, when they cease to be members of the House, they cease to be members of the Committee. Therefore, there are vacancies on this Committee and the manner in which the vacancies are to be filled up is to be determined by the President. I therefore commend this motion for your acceptance.

Mr. President: This Resolution has been moved by Mr. Satyanarayan Sinha:

"Resolved that this Assembly do proceed to elect, in the manner required under Rule 42(1) of the Constituent Assembly Rules, two members to be members of the Staff and Finance Committee."

The motion was adopted.

Mr. Satyanarayan Sinha: Sir, I move:

"Resolved that this Assembly do proceed to elect, in the manner required under Rule 44(3) of the Constituent Assembly Rules, three members to be members of the Credentials Committee."

I have to say the same thing which I said in regard to the first motion. The members originally elected for this Committee have ceased to be members of this House. Therefore, the House has got to elect three members from amongst its present members in the manner to be determined by the President.

An Honourable Member: We have not got the Rules.

Mr. President: The motion is only that certain members have to be elected according to rules to certain Committees. If we adopt the motion, then we will elect them according to the rules and before we elect them you will get the rules, I suppose! (*Laughter.*)

I do not think any discussion on this either is necessary. I shall put the motion to vote.

The motion was adopted.

Mr. Satyanarayan Sinha: Sir, I move:

"Resolved that this Assembly do proceed to elect, in the manner required under Rule 45(2) of the Constituent Assembly Rules, three members to be members of the House Committee."

I have to say the same thing as I said in regard to the previous motion, because the original members elected to this Committee have ceased to be members of the House since.

Mr. President: I put this also to vote now.

The motion was adopted.

Mr. Satyanarayan Sinha: Sir, I move:

"Resolved that this Assembly do proceed to elect, in the manner required under rule 40(2) and (5) of the Constituent Assembly Rules, nine members to be members of the Steering Committee."

In this connection, I would like to invite your attention, Sir, to Rule 40 which says:

"A Steering Committee shall be set up for the duration of the Assembly and shall consist initially of eleven members (other than the President) to be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote."

Last time we had elected 11 members. Out of the original members elected by the House, three have ceased to be members of this House. Therefore, there are three casual vacancies. You will find under the same rule, sub-rule (2) the following:

"The Assembly may from time to time elect, in such manner as it may deem appropriate, eight additional members, of whom four shall be reserved for election from among the representatives of the Indian States."

Out of these additional eight members, four seats were reserved for the States. Out of those four, last time we had elected two from amongst the members of the States, so that there are two vacancies to be filled up out of the seats allotted to the States. The other four seats we have got to fill up by election of members from the General Constituency. Now these six vacancies have to be filled by the method of proportional representation and the three casual vacancies in the manner to be determined by the President. What I am suggesting is that just as we elected two members from among the States representatives by the method of proportional representation, so I would commend to this House that they will accept that the other six vacancies may also be filled by proportional representation and out of these six, two will be reserved for the States representatives. The other three vacancies will be filled up like other committees by election in a manner to be determined by the President, as he deems fit.

Mr. President: Is it necessary to have any discussion on this? I put the motion to vote.

The motion was adopted.

ELECTION OF VICE-PRESIDENTS.

Mr. President: Now, there is one Resolution which we have to consider and that is with regard to election of two Vice-Presidents. Under the Rule as it stands at present, there are two Vice-Presidents to

be elected by the House and there were to be three Vice-Presidents *ex-officio* who would have been the Chairmen of the three Sections. Now the amendment that is proposed is that since Sections are not going to meet, all references to Sections should be omitted from the Rules and therefore those three Vice-Presidents will not now be Vice-Presidents at all because there will be no Sections whose Presidents would have been *ex-officio* Vice-Presidents of the Constituent Assembly. Dr. H. C. Mookerjee was the Vice-President who was elected last time, but after the new set-up he ceased to be a member of the Constituent Assembly because all members of the Constituent Assembly from Bengal have ceased to be members. He has been re-elected, but since he ceased to be a member so he ceased to be the Vice-President also. Now, someone has to be elected in his place. I do not know whether members may like to re-elect him, but that is a different matter. What I am suggesting is that there is no real difficulty because this is no intricate question. The motion is merely that two Vice-Presidents have to be elected. Of course, the election may take place tomorrow or day after, but at present all you have to say is that these two places of Vice-Presidents should be filled up. If the members have no objection, then I might ask the mover to move the Resolution, but if there is any objection on the part of any member I would rather put it off.

Honourable Members: There is no objection.

Mr. President: Then, Mr. Satyanarayan Sinha, you may please move this.

Mr. Satyanarayan Sinha: Sir, I move:

"Resolved that this Assembly do proceed to elect two Vice-Presidents in accordance with the provisions contained in the Constituent Assembly Rules."

Sir, you have already explained that we have got to elect only two Vice-Presidents. Last time we elected only one Vice-President and left the other seat to be filled up later. Dr. Mookerjee was unanimously elected Vice-President of this House. He ceased to be a member of this House on account of the Bengal Partition. I am glad that he has been re-elected to this House, but under the Rules the position has not changed. He is after all a newly elected member and we have also to elect another Vice-President. The manner in which the election will be held will be determined by the President.

Dr. N. B. Khare (Alwar State): Sir, while I support the Resolution, I would suggest that out of the two Vice-Presidents . . . .

Honourable Members: Mike, please.

Dr. N. B. Khare: I am speaking very loud (*laughter*)—one seat should be from the States Group.

Mr. President: I am sorry, Dr. Khare, I have not heard what you said. (*Renewed laughter.*)

Dr. N. B. Khare: Sir, while supporting this Resolution I would respectfully suggest that out of the two Vice-Presidents one should be from the States representatives. This does not mean that I want this on the basis of proportional representation for the States.

Mr. President: I put the motion to vote.

The motion was adopted.

Mr. President: I would now make some announcements. Now that we have decided that all these elections should take place I have to fix a time for putting in nominations and also for voting if it becomes necessary. I am fixing the times as follows:

Nommations will be received by the Secretary up to 1 P.M. on the 16th. I have given 48 hours from now for the nominations. The elections, if necessary, will be held in accordance with the principle of proportional representation by means of single transferable vote between 3 and 4 P.M. on the 17th in the Under Secretary's room, No. 25 ground-floor. This relates to the various Sub-Committees with regard to which we have just passed Resolutions.

With regard to the Vice-Presidents, there is no question of proportional representation there, but we have certain rules, according to which that election will take place. I have fixed 5 P.M. to-morrow for receiving nominations and the elections will take place on the following day, if necessary, at 4 P.M. in the same room, mentioned above.

There is one thing more which I would like to mention to the House before we adjourn to-day and that is with regard to the timing of our sessions from to-morrow onwards. The Secretary, according to our usual procedure has notified that tomorrow we will begin at 10 o'clock. I was suggesting that it would be better if we sit in the afternoons every day *i.e.* from 3 to 6 P.M. That would give members plenty of time to consider the various proposals that will be coming up; they will have the whole of the morning at their disposal for this purpose. Therefore, I would suggest that we have our sessions from 3 to 6 P.M. from to-morrow onwards.

Mr. Tajamul Husain: Sir, I would like to point out out that to have the sittings from 3 to 6 P.M. would be rather inconvenient to the members because that will be a very hot time. We nave to come from long distances and in order to be here by 3 we have to leave our houses by say 12 or 1 P.M. The best time would be the mornings as we have had to-day. We may, if necessary, have the sittings from 11 A.M. to 1 or 1-30 P.M.

Mr. President: I may point out that Delhi is quite hot even at 1 o'clock—the time of going back. It will not make any difference if you go at 1 o'clock or come at about 2 P.M.

Begum Aizaz Rasul (U. P.: Muslim): May I point out that the month of Ramzan will be starting in a few days' time and it would be very inconvenient for Muslim members to sit from 3 to 6 P.M. because the time for breaking the fast will be soon after that? So I would suggest that the morning time would be the best for all.

Mr. President: I do not know when Ramzan commences. We can consider the question again when Ramzan begins. We shall in

any case be finishing off at 6 P.M. which is at least one hour before sun-set. Here the sun sets after 7 P.M. I take it that the House accepts my suggestion.

The House stands adjourned till 3 P.M. to-morrow.

The Assembly then adjourned till 3 P.M., on Tuesday, the 15th July, 1947.

CONFIDENTIAL

APPENDIX

No. C.A./22/Com/47

CONSTITUENT ASSEMBLY OF INDIA

REPORT OF THE ORDER OF BUSINESS COMMITTEE

COUNCIL HOUSE,

New Delhi, 9th July 1947.

FROM

THE CHAIRMAN,

ORDER OF BUSINESS COMMITTEE.

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

SIR,

During the last session of the Assembly, we submitted a report which was necessarily tentative because of the fluid political circumstances then obtaining. Since then, momentous changes have occurred and the position has become crystallised. His Majesty's Government have issued a fresh statement on June the 3rd which has been accepted by all the principal political parties; and as a result of the decisions taken in pursuance of that statement, certain parts of the country will secede from India. These changes have revolutionised both the procedural and the substantive parts of the scheme on the basis of which we have been working hitherto. So far as the procedural aspect is concerned, it is no longer necessary for the Assembly to split into Sections and to consider the question of groups, and the double majority provisions in regard to matters of major communal importance are no longer operative.

It is against this background that we held a meeting on the 3rd of July. Pandit Nehru was present at the meeting at our request, and we are grateful to him for the help he gave us.

2. We understand that during the next session, the Assembly will have before it three reports for consideration—those of the Union Constitution Committee, the Union Powers Committee and the Provincial Constitution Committee. Between them these reports will deal with a large majority of questions that would have to be decided by the Assembly. We recommend that the Assembly take decisions on these reports in the July Session and direct that the work be taken up at once of drafting the Constitution Bill. We recommend also that the Assembly appoint a Committee of members to scrutinise the draft before it is submitted to the Assembly and its subsequent session.

3. The matters that will remain outstanding at the end of July Session will be the reports of the Advisory Committee on Fundamental Rights, Minorities and the Administration of the Tribal and Excluded Areas. We suggest that the Advisory Committee complete its work in August and the recommendations made by them incorporated by the Draftsman in his Bill notwithstanding that no decisions will by then have been taken on them by the Assembly. Any changes which are subsequently considered necessary could be incorporated in the draft Bill by suitable amendments.

4. In our last report, we had suggested that the Assembly should complete its work by the end of October this year. We reiterate this recommendation; and, having regard to the progress made by the committees, we think this is quite practicable. We propose accordingly that the Assembly authorise the President to summon a session sometime in October, preferably in the early part of the month, for the purpose of considering the draft of the Constitution.

5. We do not think it necessary in the altered circumstances for decisions taken in the July Session to be circulated in accordance with Rule 63 of the Constituent Assembly Rules.

6. Our recomendations will involve an amendment to the Rules which we request the Steering Committee to take into consideration.

I have the honour to be,

Sir,

Your most obedient servant,

K. M. MUNSHI,

Chairman.

(on behalf of the Committee).

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Volume IV
No. 2



Tuesday,
15th July,
1947.

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 15th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three 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 the Register:

1. The Honourable Mr. Hussain Imam (Bihar: Muslim).
2. Mr. N. Madhava Rao (Eastern States Group III).
3. Rao Raja Jayendra Singh Ju Dev (Central India States Group).
4. Pandit Thakur Das Bhargava (East Punjab).
5. Mr. Jasimuddin Ahmed (West Bengal: Muslim).

AMENDMENTS OF THE RULES

Mr. President: I shall now take up the amendments of the Rules.

RULE 2

Mr. K. M. Munshi (Bombay: General): Sir, I propose to move my amendments rule by rule. Perhaps that would be more convenient to the House. Sir, I move:

"That in clause (b) of Rule 2 the words 'Sections or' be deleted and also that clause (f) be deleted."

As the House will see both these clauses refer to Sections. Rule 2, clause (b) says:

"'Chairman' means the person who for the time being presides over the Assembly or any of its Sections or Committees."

There are to be no sections and therefore the words "Sections or" have to be deleted. Also clause (f) which refers to Sections should be deleted from the Rules.

Mr. President: The question is:

"That in clause (b) of Rule 2 the words 'Sections or' be deleted and also that clause (f) be deleted."

The motion was adopted.

RULE 3

Mr. K. M. Munshi: Sir, I move:

"That in Rule 3 the words 'or any Section thereof' be deleted."

Mr. President: The question is:

"That in Rule 3 the words 'or any Section thereof' be deleted."

The motion was adopted.

RULE 4

Shri K. Santhanam (Madras: General): Sir, I have an amendment to Rule No. 4. I move:

"That the Proviso to Rule 4 be deleted."

This is consequential to the abolition of the Indian Legislative Assembly and the proviso ceases to have any meaning. Therefore I move for its deletion.

Mr. K. M. Munshi: Sir, I accept the amendment moved by Mr. K. Santhanam.

Shri Sri Prakasa (U. P.: General): What happens to the Members who represent these constituencies (Delhi or Ajmer-Merwara) at the present moment in the Constituent Assembly?

Mr. K. M. Munshi: The present members will continue but in case there is a vacancy a provision is being made in the amendment that is going to be moved by Mr. K. Santhanam to Rule No. 5. Special provision has been made for it.

Mr. President: The question is:

"That the Proviso to Rule 4 be deleted."

The motion was adopted.

RULE 5

Mr. K. M. Munshi: Sir, I move:

'"That in sub-rule (2) of Rule 5, delete the words 'or the appropriate authority in British Baluchistan'."

"That for sub-rule (6) the following be substituted:

'(6) As soon as may be after the receipt of the request mentioned in sub-rule (2), the Speaker of the Provincial Legislative Assembly concerned—

(a) shall appoint by suitable notification a person to be the Returning Officer for the election and may also in like manner appoint any person who may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning Officer at any such election, and

(b) shall also appoint by suitable notification—

(i) a date, not later than fifteen days after the date of notification, for the nomination of candidates;

(ii) a further date, not later than the third day after the first-mentioned date, for the scrutiny of nominations;

(iii) a further date, not later than two days after scrutiny, for withdrawal of his candidature by a candidate; and

(iv) a further date, not later than twenty-one days from the date fixed for withdrawal, on which a poll shall, if necessary, be taken."'

The reason for these amendments is that no provision was made for the appointment of a Returning Officer and it has been found that such a provision is necessary.

Mr. President: The question is:

'"That in sub-rule (2) of Rule 3, delete the words 'or the appropriate authority in British Baluchistan'."

"That for sub-rule (6) the following be substituted:

'(6) As soon as may be after the receipt of the request mentioned in sub-rule (2), the Speaker of the Provincial Legislative Assembly concerned.

(a) shall appoint by suitable notification a person to be the Returning Officer for the election and may also in like manner appoint any person who may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning Officer at any such election and

(b) shall also appoint by suitable notification—

(i) a date, not later than fifteen days after the date of notification, for the nomination of candidates;

(ii) a further date, not later than the third day after the first-mentioned date, for the scrutiny of nominations;

(iii) a further date, not later than two days after scrutiny, for withdrawal of his candidature by a candidate; and

(iv) a further date, not later than twenty-one days from the date fixed for withdrawal, on which a poll shall, if necessary, be taken."

The motion was adopted.

Shri K. Santhanam: Sir, I move:

"That in sub-rule (2) of Rule 5, after the words 'as the case may be' the words 'the Advisory Councils of Delhi and Ajmer-Merwara' be inserted."

"That in sub-rule (5) of Rule 5, after the words 'in any part of India', the words 'which is participating or entitled to participate in this Assembly' be inserted."

"That for sub-rule (11) of Rule 5, the following be substituted:

'The foregoing rules shall apply in relation to Delhi and Ajmer-Merwara subject to the following modifications, namely:

(a) that for 'the Provincial Legislative Assembly' there shall be substituted 'the Delhi Advisory Council or the Ajmer-Merwara Advisory Council as the case may be'; and for 'the Speaker of the Provincial Legislative Assembly' there shall be substituted 'the Chairman of the Delhi or Ajmer-Merwara Advisory Council as the case may be'.

(b) that instead of a section of the Provincial Legislature taking part in the election, the non-official members of the Delhi or the Ajmer-Merwara Advisory Council shall take part in it.'"

These are all consequential to the changes that have been made and I do not think any further explanation is needed.

Mr. K. M. Munshi: Sir, I accept the amendments moved by Mr. Santhanam. They carry out the idea that the representatives of Delhi and Ajmer-Merwara have to be elected by the respective Advisory Councils.

Mr. President: The question is:

"That in sub-rule (2) of Rule 5, after the words 'as the case may be' the words 'the Advisory Councils of Delhi and Ajmer-Merwara' be inserted."

"That in sub-rule (5) of Rule 5, after the words 'in any part of India', the words 'which is participating or entitled to participate in this Assembly' be inserted."

"That for sub-rule (11) of Rule 5, the following be substituted:

'The foregoing rules shall apply in relation to Delhi and Ajmer-Merwara subject to the following modifications, namely:

(a) that for 'the Provincial Legislative Assembly' there shall be substituted 'the Delhi Advisory Council or the Ajmer-Merwara Advisory Council as the case may be'; and for 'the Speaker of the Provincial Legislative Assembly' there shall be substituted 'the Chairman of the Delhi or Ajmer-Merwara Advisory Council as the case may be'.

[Mr. President]

(b) that instead of a section of the Provincial Legislature taking part in the election, the non-official members of the Delhi or the Ajmer-Merwara Advisory Council shall take part in it.' "

The motion was adopted

Mr. K. M. Munshi: Sir, I move:

"That after sub-rule (6) of Rule 5 the following new sub-rule be inserted:

'(6)A. The Speaker of the Provincial Legislative Assembly concerned shall, if a poll is taken, by suitable notification fix the hour at which the poll shall commence and the hour at which it shall close on the date fixed under sub-clause (iv) of clause (b) of sub-rule (6) and the place at which the poll shall be taken.' "

"That the following be added at the end of sub-rule (9) of Rule 5:

'Where any such rules or regulations exist, it shall be competent for the Speaker of the Provincial Legislative Assembly concerned to make, with the previous approval of the President, such modifications therein as may be necessary for the purposes of this sub-rule.' " '

This completes the mechanism for holding the election. In Rule 5 we have added a provision with regard to the Returning Officer. With a view to completing the whole mechanism of election it is necessary that the Speaker should be authorised to have a poll taken, if required. Also, there may be rules which may be required to be modified and it may not be possible to come to the Constituent Assembly. In order to complete the election, therefore, the Speaker may be authorised with the previous approval of the President, to modify the rules.

Mr. K. Chengalaraya Reddy (Mysore State): Sir, when the previous amendment was moved, I stood up to raise a question as to what was the provision made for filling up a vacancy, if it arose, in an Indian State. I was told by an Honourable friend that the provision was incorporated in the Rules, and I then sat down. But now, an amendment has been moved laying down the procedure to fill up a vacancy by by-election. On a cursory reading of the Rules I do not find that any provision has been made for filling up a vacancy, if it arose, in an Indian State. I therefore suggest that a suitable provision may be made in the Rules of Procedure.

Mr. K. M. Munshi: There is some misunderstanding. As regards elections with respect to Indian States, a Standing Order has been made by the President and they will be governed by the Standing Orders.

These relate to the Chief Commissioners' provinces.

Mr. President: The question is:

"That after sub-rule (6) of Rule 5 the following new sub-rule be inserted:

'(6)A. The Speaker of the Provincial Legislative Assembly concerned shall, if a poll is taken, by suitable notification fix the hour at which the poll shall commence and the hour at which it shall close on the date fixed under sub-clause (iv) of clause (b) of sub-rule (6) and the place at which the poll shall be taken.' "

"That the following be added at the end of sub-rule (9) of Rule 5:

'Where any such rules or regulations exist, it shall be competent for the Speaker of the Provincial Legislative Assembly concerned to make, with the previous approval of the President, such modifications therein as may be necessary for the purposes of this sub-rule.' " '

The motion was adopted

RULE 10

Mr. K. M. Munshi: I come to rule No. 10. That is with regard to the convening of a meeting of the Sections. I move that the whole of the rule be deleted.

Shri Sri Prakasa: I sent notice of an amendment this morning for the insertion of a new rule after Rule 5.

Mr. President: I understand that this notice was received this morning.

Shri Sri Prakasa: I could not send it earlier. I sent it today at 10 o'clock.

Mr. President: Is it not too late?

Shri Sri Prakasa: I think the amendment is an important one because it fills in a lacuna in the existing rules. If you will permit me I shall move it.

Mr. K. M. Munshi: May I rise to a point of order? Our Rule 63 states that "No new rule shall be made nor shall any of these rules be amended or deleted except after a reference of the proposal so to make, amend, or delete the rule to the Steering Committee which shall report to the Assembly within two weeks of the receipt of the reference".

Shri Sri Prakasa: I am in your hands. I am only trying to fill in a lacuna. New elections have taken place. Rules 4 and 5 have been violated by an outside authority. All the new elections that have taken place in Bengal and the Punjab will otherwise be *ultra vires*.

Mr. President: Will you please wait till we have finished the other Rules? In the meantime, I shall consider it.

The question is:

"That rule 10 be deleted."

The motion was adopted.

RULE 11

Mr. K. M. Munshi: Sir, I move:

"That in Rule 11 for the words 'five Vice-Presidents' the words 'two Vice-Presidents' be substituted, and the following be inserted at the end of this rule:

'who shall be elected by the Assembly from amongst its members in such manner as the President may prescribe'."

Rule 11 provides for five Vice-Presidents, and this is inter-connected with Rule 12 which says that the Chairman of each of the sections shall be an *ex-officio* Vice-President of the Assembly. As there are no sections now all this becomes unnecessary. In the result there will be two Vice-Presidents both of whom will be elected by the Assembly as a whole. Sir, I move:

The motion was adopted.

RULE 12

Mr. K. M. Munshi: Sir, I move that Rule 12 be deleted. This is consequential. Sir, I move.

The motion was adopted.

RULE 13

Mr. K. M. Munshi: Sir, I move:

"That in Rule 13 for the words 'Rule 12(1)' the words 'Rule 11' be substituted."

In Rule 13 the election of two Vice-Presidents is referred to as being under Rule 12(1). Now, Rule 12 having gone and the matter having been incorporated in Rule 11, Rule 13 should be amended accordingly. Sir, I move.

The motion was adopted.

RULE 14

Mr. K. M. Munshi: Sir, I move:

"That in sub-rule (2) of Rule 14 for the words 'an elected' the word 'a' be substituted, and that the words 'as a whole' be deleted."

Rule 14 says that a Vice-President shall cease to hold office as such if he ceases to be a member of the Assembly "Any vacancy in the office of an elected Vice-President of the Assembly shall be filled by election by the Assembly as a whole." In view of the changes that have already been made there is no reason to have the words "an elected" because both the Vice-Presidents are elected. Also there is no reason to keep the words "as a whole" because both the Vice-Presidents are going to be elected by the House as a whole. Sir, I move.

The motion was adopted.

RULE 17

Mr. K. M. Munshi: Sir, I move:

"That in Rule 17 'sub-rule (6)' be deleted, and in sub-rule (8) the words 'or a Joint Secretary' be deleted."

Sub-rule (6) provides for the Secretary of the section and it lays down that the Secretary of the section shall be a Joint Secretary of the Assembly. As there are no Joint Secretaries the sub-rule should be deleted. Further the words "Joint Secretary" appear in sub-rule (8) and these words should be deleted. Sir, I move.

The motion was adopted.

RULE 18

Mr. K. M. Munshi: Sir, I move:

"That in Rule 18 the words 'sections and the' be deleted."

The motion was adopted.

RULE 19

Mr. K. M. Munshi: Sir, I move :

"That in Rule 19, 'sub-rule 1(iii)' be deleted and in sub-rule 1(ix) the words 'or the sections' be deleted."

The motion was adopted.

RULE 23

Mr. K. M. Munshi: Sir, I move :

"That after Rule 23 the following be inserted as Rule 23A—

'23-A. (1) The presence of at least one-third of the whole number of members shall be necessary to constitute a meeting of the Assembly or any of its committees.

(2) If the Chairman, on a count being demanded by a member at any time during a meeting, ascertains that one-third of the whole number of members are not present, he shall adjourn the Assembly or the committee, as the case may be, for fifteen minutes, and if on a fresh count being taken after that period it is found that there is still no quorum, he shall adjourn the Assembly or the committee, as the case may be, till the next day on which it ordinarily sits.' "

On the last occasion the question of quorum was not decided by the rules and it was left over to be incorporated in an additional rule. Sir, I move.

Shri K. Santhanam: Sir, I am not moving the amendment that stands in my name.

Shri Sri Prakasa: Sir, may I know if these amendments of Mr Munshi and the further amendments moved by Mr. Santhanam had been referred to the Steering Committee and if all this is in the nature of a note by the Steering Committee? Or are Mr. Munshi and Mr Santhanam moving these off their own bat?

Mr. K. M. Munshi: These rules are not my own; they are the report of the Steering Committee which I am placing before the House. They were initiated by the Steering Committee and I am moving them on behalf of the Committee.

Shri Sri Prakasa: Then what about Mr. Santhanam's amendments?

Mr. K. M. Munshi: Those are amendments of the rules as proposed by the Steering Committee and so they are not covered by Rule 66; they are not new rules.

Shri Sri Prakasa: Sir, I do not know if you are satisfied with what Mr. Munshi says. I am not. I feel that you may just as well permit my amendment to be moved which is before you and which I think is very important.

Mr. President: I have asked the Honourable Member to wait till the end; the question of moving it does not arise at this stage.

Shri Sri Prakasa: An occasional reminder will be helpful. (*Laughter.*)

Shri Jaspat Roy Kapoor (U. P. : General): Sir, I do not propose to move my amendment.

Mr. R. K. Sidhwa (C. P. & Berar : General): I am also not moving my amendment.

Mr. President: Then the amendment of Mr. Munshi will be put to the vote.

The question is:

"That after Rule 23 the following be inserted as Rule 23A—

'23-A. (1) The presence of at least one-third of the whole number of members shall be necessary to constitute a meeting of the Assembly or any of its committees.

(2) If the Chairman, on a count being demanded by a member at any time during a meeting, ascertains that one-third of the whole number of members are not present, he shall adjourn the Assembly or the committee, as the case may be, for fifteen minutes, and if on a fresh count being taken after that period it is found that there is still no quorum, he shall adjourn the Assembly or the committee, as the case may be, till the next day on which it ordinarily sits.' "

The motion was adopted.

RULE 31

Mr. K. M. Munshi: I now come to Rule 31. I move.

"That sub-rule (3) of this Rule be deleted."

Rule 31 says:

"(1) A matter requiring the decision of the Assembly, shall be brought forward by means of a question put by the Chairman.

(2) In all matters requiring to be decided by the Assembly, the Chairman shall excercise a vote only in the case of an equality of votes.

(3) Any question relating to a matter referred to in paragraph 19(vii) of the Statement shall be decided as laid down therein."

Now, Sir, this sub-rule (3) has no efficacy. It has no meaning. I therefore move that it be deleted.

Mr. M. S. Aney (Deccan States): Will the Honourable Mover read out paragraph 19(vii) of the Statement?

Mr. K. M. Munshi: It reads:

"In the Union Constituent Assembly resolution varying the provisions of paragraph 15 above or raising any major communal issue shall require a majority of the representatives present and voting of each of the two major communities. The Chairman of the Assembly shall decide which, if any, resolutions raise major communal issues and shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision."

This is a double majority clause which, as I said, has lost its efficacy.

Mr. President: The question is:

"That sub-rule (3) of Rule 31 be deleted."

The motion was adopted.

RULE 35

Mr. K. M. Munshi: Sir, I move:

"That the two provisos to Rule 35 be deleted."

The rule and the provisos run as follows:

"In all matters relating to procedure or the conduct of business of the Assembly, the decision of the Chairman shall be final."

Provided that when a motion raises an issue which is claimed to be a major communal issue, the Chairman shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision :

Provided further that no Section shall deal with matters which fall within the purview of the powers and functions of the Union Constituent Assembly or vary any decision of the Union Constituent Assembly taken upon the report of the Advisory Committee referred to in paragraph 20 of the Statement."

For the reasons which I gave yesterday, these provisos become entirely useless. I move therefore that these two provisos may be deleted.

The motion was adopted.

RULE 36

Mr. K. M. Munshi: I now come to Rule 36. I move first that the word 'exclusive' in the first line be deleted. It says: 'It shall be the exclusive function of the Advisory Committee referred to in paragraphs 19 and 20 of the Statement to initiate and consider proposals.....'. Now that that Statement is gone, this Statement becomes useless.

I move next that the words "Union Constituent" wherever they occur in this Rule and the words "shall be binding on the Sections and" be deleted.

Mr. President: You omit only the words "Union Constituent"?

Mr. K. M. Munshi: Yes, Sir. The word "Assembly" remains.

Mr. President: The question is :

"That in Rule 36,—

(i) the word 'exclusive';

(ii) the words 'Union Constituent', wherever they occur; and

(iii) the words 'shall be binding on the Sections and'

be deleted."

The motion was adopted.

RULE 41

Mr. K. M. Munshi: Sir, Rule 41 deals with the functions of the Steering Committee. Sub-rule (1)(c) runs thus: "act as a general liaison body between the Assembly and the Sections, between the Sections *inter se*, between Committees *inter se*, and between the President and any part of the Assembly;" I propose that in sub-rule (1)(c), the words "between the Assembly and the Sections, between the Sections *inter se*" be deleted. These words are no longer necessary.

The motion was adopted.

RULE 42

Mr. K. M. Munshi: In sub-rule (1)(b) of this Rule, for the word 'five', substitute the word 'two'. As there are only two Vice-Presidents now, this change has become necessary.

The Honourable Pandit Hirday Nath Kunzru (U. P.: General): May I know from Mr. Munshi how the amended Rule 41(1)(c) reads?

Mr. K. M. Munshi: The Committee shall act as a general liaison body between Committees *inter se*, and between the President and any part of the Assembly.

The Honourable Pandit Hirday Nath Kunzru: Liaison between the Assembly and the Committees?

Mr. K. M. Munshi: No. Between the committees *inter se*.

Pandit Govind Malaviya (U. P.: General): Will Mr Munshi, Sir, explain what is meant by liaison between any part of the Assembly and the President? I can understand liaison between the committees.

Mr. K. M. Munshi: I am not responsible for that.

Mr. President: I am afraid the question of interpretation has been raised too late. When it becomes necessary to interpret it, we shall do so.

The Honourable Mr. Hussain Imam (Bihar: Muslim): If any absurdity becomes apparent it is within the competence of the House to make the necessary consequential change.

Mr. President: It does not arise out of the amendment now moved.

Mr. Munshi's amendment is to Rule 42.

In clause (b) of Sub-Rule (1) substitute the word "two" or "five"

The motion was adopted.

RULE 45

Mr. K. M. Munshi: I now come to Rule 45. I move that in sub-rule (2), delete the words "one representing each Governor's Province". This is also conseqential. Sub-rule (2) reads as follows:—this is about the House Committee:

"The Committee shall consist of eleven members, who shall be elected by the Assembly, one representing each Governor's Province in the manner to be prescribed by the President."

Now there are not eleven Governor's provinces, and the amendment would mean that there may be eleven members but not each representing a Governor's province. I move the amendment.

The motion was adopted.

RULE 46

Mr. K. M. Munshi: The next amendment is to Rule 46 which relates to other Committees. I move:

"That the words 'or a Section according as the business of the Committee relates to the Assembly or the Section' be deleted."

This is also consequential.

The motion was adopted.

RULE 47

Mr. K. M. Munshi: I move that in Rule 47 the words beginning with "and the Secretary of any Section, etc." to the end of the rule be deleted.

Mr. President: This is also consequential.

The motion was adopted.

RULE 48

Shri K. Santhanam: I move, Sir, that in Rule 48 for the word "shall" the word "may" be substituted. This is purely consequential to the amendment with regard to quorum which the House has adopted today. As the rule stands, it says:

"The motion by which a Committee is to be set up shall state the quorum necessary to constitute a meeting of the Committee."

Because we had no rule regarding quorum, it was obligatory to state the quorum. Now we have got a rule which lays down the quorum as one-third. Therefore, this obligation is no more necessary. My amendment is that the motion by which a committee is to be set up may state the quorum, as quorum has already been provided for.

Shri Sri Prakasa: May I draw your attention, Sir, to Rule 66? Has this been referred to the Steering Committee?

Mr. President: I do not think that the Steering Committee has been consulted, but this amendment follows from the other amendment which you have accepted. It is only consequential.

Shri Sri Prakasa: I hope the same ruling will apply in my case.

Mr. President: The question is:

"That in Rule 48 for the word 'shall' the word 'may' be substituted"

The motion was adopted.

RULE 49

Mr. K. M. Munshi: I move:

"That in Rule 49 the words 'or to the Section concerned, as the case may be' be omitted."

The motion was adopted.

RULE 63

Mr. K. M. Munshi: I move that Rule 63 be deleted. This is with regard to the consideration of the draft constitutions by the Provincial Legislatures. I gave my reasons when I presented the report of the Order of Business Committee and I need not repeat them now.

Mr. President: Mr. Munshi's amendment is that Rule 63 be deleted. Does anyone wish to say anything about it?

The motion was adopted.

Shri Sri Prakasa: Before Mr. Munshi moves his amendment to Rule 67, I move that Rule 66 be deleted, even if it has not gone to the Steering Committee, as it is purely a consequential amendment. I hope you will permit this amendment to be moved. I think, Sir, that this Rule should go, and the Constituent Assembly should be able to exercise its inherent powers to change the rules instead of members having to go to the Steering Committee every time. I have a precedent for this in this afternoon's proceedings themselves in as much as the amendments to the original rules moved by Mr

[Shri Sri Prakasa]

Santhanam were in no way amendments to Mr. Munshi's amendments. If you will see, Sir, the amendments moved by Mr. Santhanam to Rules 4 and 5, you will find that they were absolutely new amendments and that they did not go to the Steering Committee. Since you permitted these amendments to be moved here, I hope you will permit me also to move this amendment.

Mr. President: Your amendment is out of order. The amendments to which reference has been made referred to amendments placed before the House and which had come here in due course after being passed by the Steering Committee. Therefore those amendments were perfectly in order. This Rule has never gone before the Steering Committee and therefore your amendment is altogether out of order.

RULE 67

Mr. K. M. Munshi: Coming to the last amendment with regard to Rule 67, I move:

"That the words 'the Sections and' in the first sentence and the whole of the second sentence be deleted.'

This is also a consequential amendment.

Mr. President: Does anyone wish to say anything on this?

Shri Jaspat Roy Kapoor: Mr. President, I am raising a point of order. Rule 67 is the rule on which Mr. Munshi has been relying so far. Rule 67, Sir, lays down that every proposal must go before the Steering Committee and the Steering Committee must consider it and must submit its report to the Assembly. Now, Sir, all these proposals which have so far been placed before us by Mr. Munshi have I understand been considered by the Steering Committee, but in addition to that the Steering Committee must submit its report to the Assembly. So far no report of the Steering Committee has been placed before us. Now, Mr. Munshi is proposing an amendment to Rule 67. I would like to know what is the report of the Steering Committee. With regard to this proposal of Mr. Munshi, if there is no report of the Steering Committee before us, I think it is out of order for him to make any proposal to amend Rule 67.

Mr. President: As I understood from Mr. Munshi, all these amendments which he has been proposing were on behalf of the Steering Committee, and though they are put in the form of amendments, it is really the report of the Steering Committee.

The Honourable Pandit Hirday Nath Kunzru: Was the President informed that these were the amendments to the rules which had been proposed by the Steering Committee?

Mr. President: There was a meeting of the Steering Committee in which all these rules and amendments had been considered and they are coming from there.

Shri Jaspat Roy Kapoor: My submission is that there must be a report of the Steering Committee before us. On the agenda paper all

that we have is that Mr. Munshi shall move the proposals as are contained in the Order Paper. There has been no report of the Steering Committee before us. The report of the Steering Committee must be presented in a proper form to the Honourable the President of the Assembly either by the President or by the Secretary of the Committee. Mr. Munshi is neither the President nor the Secretary of the Steering Committee.

The Honourable Sardar Vallabhbhai Patel (Bombay General): On a point of order I would like to ask how this could be raised after the rules have been passed. It should have been asked at the initial stage.

Mr. President: I agree. The question was raised at an earlier stage and it was answered that the amendments had been considered by the Steering Committee. Probably the mistake has arisen because it is not so stated in the agenda that this is a report from the Steering Committee. Otherwise, so far as the substantial compliance with the rules is concerned that has been done.

Shri Jaspat Roy Kapoor: Then, as a matter of fact, is there any report of the Steering Committee?

Mr. President: It is not stated as a report but it is a report submitted by the Steering Committee. Mr. Munshi has been authorised by the Steering Committee to put these amendments before the House on behalf of the Steering Committee.

The Honourable Sardar Vallabhbhai Patel: The Chairman of the Steering Committee is the President of the Constituent Assembly and the reference may be oral.

Mr. K. M. Munshi: The position is that the President of the Constituent Assembly is the *ex-officio* Chairman of the Steering Committee. Naturally he cannot place the report. The *ex-officio* Secretary is not a member of this House and the Steering Committee has asked one of its members as a Rapporteur to place its decisions before this House. These rules were the rules which emanated from the Steering Committee and which the Steering Committee authorised me to place before the House.

Mr. President: I have already ruled that the amendment is in order. Now I put the amendment which has been moved by Mr. Munshi to vote.

The question is:

"That in Rule 67 the words 'the Sections and' in the first sentence and the whole of the second sentence be deleted."

The amendment was adopted.

Mr. President: There was an amendment which Mr. Sri Prakasa wanted to move. That has not gone to the Steering Committee, but I understand that the amendment which he proposes to move rectifies a lacuna in our rules. I therefore ask the permission of the House to let him move the amendment. If the House agrees, I would permit him to move it.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): May I suggest that he be asked to send it to the Steering Committee and it may be taken up later?

Mr. President: It is after all more or less a formal business. It rectifies a lacuna which exists in our rules which we have discovered. So it may not be necessary to go through the formality and send it to the Steering Committee, if the House permits it.

Diwan Chaman Lall (East Punjab: General): Are we bound by the rules we have made?

Mr. President: We are certainly bound by the rules.

Diwan Chaman Lall: There is no rule under which the President can ask the permission of the House. I want to know what is the proper procedure to amend the rules passed by the Steering Committee.

Mr. President: After hearing the amendment if the House still thinks that it should be put to the Steering Committee, then I will do so. Mr. Sri Prakasa, will you kindly read out the amendment?

Mr. M. S. Aney: Rule 66 seems to be very imperative and leaves no discretion to anybody. Unless some power under the rules is given to President to suspend the operation of any rule on account of emergency, I think the President cannot call upon this House to accept any amendment in order to infringe these rules.

Mr. President: I thought the House had power to dispense with its own rules when it liked and therefore I must not take upon myself to permit this amendment to be moved. As far as I can see there is no provision for allowing the House or the President to suspend any of the rules, but I take it that it is inherent in the House to suspend any of the rules for the time being and to permit any member to move anything which does not strictly fall within these rules.

Shri Jaspat Roy Kapoor: May I draw your attention to Rule 26 which says:

"Unless otherwise directed by the Chairman, notice of every motion, accompanied by a copy of the motion shall be given at least three clear days before the day on which the motion is to be moved in the Assembly. . . . ."

Mr. President: That only lays down the time for giving notice of any motion. That is why I said that if the House does not wish to take this up, I am not going to allow it. But if the House permits, I shall have no objection. Therefore, I put it to the House.

Will Shri Sri Prakasa read his amendment?

Shri Sri Prakasa: After Rule 5, insert the following new rule:

"Notwithstanding the provisions of Rules 4 and 5 above, the Governor-General of India may, in pursuance of the statement of His Brittanic Majesty's Government of 3rd June 1947, order fresh elections to the Constituent Assembly from the areas mentioned in paras. 4 to 14 of that statement and thereupon the members already elected from the said areas whether or not they have taken their seats in the Assembly in the manner prescribed in Rule 3, shall be deemed to have vacated their seats and the members newly elected shall be deemed to have been duly elected as members of the Assembly. This Rule shall have retrospective effect from June 3 1947."

I think, Sir, that this rule is self-explanatory. The fact is that the Viceroy acted in a manner which was contradictory to the Rules that the Constituent Assembly had framed for itself. Rules 4 and 5 definitely prescribe the manner in which seats will be vacated and filled. These rules were grossly violated during the last few months and new elections were held. Many members of this House were deemed to have vacated their seats without having resigned their membership. We have all acquiesced in that.

Now, Sir, in order to vindicate our own honour, I think it is imperative that we should pass a rule so that all that has happened may be sanctioned formally. If we do not pass this rule, I submit, Sir, most respectfully that the presence of the new members from Bengal and the Punjab cannot be allowed. I therefore think that it is essential that this rule should be passed. I hope the House will agree.

Mr. President: I would like to know whether the House would permit this amendment to be taken up. We are not now going into the merits. The question is whether it should be allowed to be discussed.

The Honourable Pandit Jawaharlal Nehru: I am not saying anything on merits. What I was going to say is this. Even if it is taken up, this is something which the Steering Committee must consider. This is a long drawn out Rule which, even if accepted on merits, has to be looked into by lawyers and others. The question is how it should be accepted. It cannot be taken up in this manner. Otherwise, instead of removing a difficulty, we might be creating other difficulties. I submit the proper course is to send it to the Steering Committee.

Mr. President: I am putting it to the House.

The motion to permit the amendment being taken up was negatived.

Shri Sri Prakasa: Am I to take it that this amendment is lost?

Mr. President: It is not lost. It is not taken up. You can send it to the Steering Committee and it may come up in due course.

Shri Sri Prakasa: May I respectfully enquire what will be the position of the new members who have been elected and who have taken their seats? In the light of Rules 4 and 5, will their presence be allowed?

Mr. President: I allowed them to take their seats yesterday. They will continue.

The Honourable Pandit Jawaharlal Nehru: May I point out that the question that Shri Sri Prakasa has raised is an important question? The question is how to do it. The bringing up of an informal amendment to the Rules is an improper way. Possibly it will be open to the House to pass a resolution or if it is necessary to change the Rules we may change them. But it must be considered by the appropriate authority. My only submission is that it cannot be taken up in this casual way.

Shri Sri Prakasa: We have admitted members in a casual way.

Mr. President: We may now pass on to the next item.

Mr. H. V. Kamath (C. P. & Berar: General): I submit that in the light of the new rules that have been made, and the old rules that have been amended or deleted all the rules be re-numbered omitting all A's etc.

Mr. President: We shall do that. I think the House has no objection to the re-numbering of the Rules consequent on the amendments. I take it that this is agreed to.

Pandit Govind Malaviya: Sir, I think the right course will be, that the rules should all be correctly re-numbered, and then in a formal manner put before the House *en bloc* and adopted without any further discussion. That will regularise things.

Many Honourable Members: Why?

Mr. President: We shall now pass on to the next item.

Mr. Deshbandhu Gupta (Delhi): Before the next item is taken up, Sir, may I know what has happened to the amendment of which notice had been given by me?

Mr. President: That shares the same fate as that of Mr. Sri Prakasa.

Mr. Deshbandhu Gupta: In view of the important nature of the amendment, may, I submit that it may be taken up now with the permission of the House.

Mr. President: I think there is no use of repeating that experiment. You had better leave it.

We shall now go on to the next item in the agenda. Sardar Vallabhbhai Patel will move the motion standing in his name.

Mr. Tajamul Husain (Bihar: Muslim): Before we proceed with the motion, I would like to know what happened to the resolution which I had sent about four days ago in connection with the motion about to be moved now?

Mr. President: I take it that you are referring to the dissolving of the Committee which has already completed its function and submitted its report. Is that the resolution you are referring to?

Mr. Tajamul Husain: That is the only resolution I have sent you.

Mr. President: I have ruled it out of order because the function of the Committee is already over and it has made its report.

Mr. Tajamul Husain: May I know if it is the custom of the House not to inform an Honourable Member who sends a resolution that it has been disallowed? I have had no information of this up till now.

Mr. President: I have ruled it is out of order.

Mr. Tajamul Husain: I accept your ruling. I am asking why I was not informed of it. Is it the practice, when an Honourable Member sends a resolution and you disallow it, that you do not inform the member concerned?

Mr. President: I shall take care in the future to inform members if I disallow any resolution.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION

The Honourable Sardar Vallabhbhai Patel: Sir, I move that this Constituent Assembly do proceed to take into consideration the Report* on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April, 1947.

This Committee has submitted its report which has been circulated amongst all the members of this House since about a fortnight and the report is in the possession of all the members. What I wish to point out in moving this motion is that this report is not the final draft of the provincial constitution. According to the instructions given to the Committee, it has settled certain principles of the provincial constitution, and therefore, this House need not go into the verbal details or into the exact legal form or constitutional form of these clauses that have been submitted in the memorandum. If the various clauses in the report are, after consideration, adopted, or improved upon, then, it will be the function of the draftsmen or the lawyers who will be entrusted with the work of drafting the constitution to put them in the proper form. Therefore, the House need not waste its time on going into a consideration of the language of the various clauses.

It should also be remembered that this report contains roughly about 85 per cent. of the draft or 85 per cent. of the principles of the provincial constitution that has to be framed. Because, you will remember that this House has appointed an Advisory Committee which has to submit its report after the Reports of the Minorities Committee and the Tribal and Excluded and Partially Excluded Areas Committee are received. These Reports have not yet been received. When they are received, in due course, the Advisory Committee will meet and consider these Reports when the question of protection of minorities rights and interests will be taken into account. It has been agreed that this Advisory Committee should meet during the course of this month and submit its report before this House disperses or meets again. Therefore, that report will come at a later stage.

Now, in dealing with the memorandum that is before you, I shall briefly touch upon the salient features of the draft. The first question we had naturally to consider was whether the provincial constitution shall be of a unitary type or shall be of a federal type, and as there was a little difference of opinion on this question, the Committee thought it proper to have a joint session of the Provincial Constitution Commit-

*Appendix.

[The Honourable Sardar Vallabhbhai Patel]

tee and the Union Constitution Committee. Both these Committees met and they came to the conclusion that it would suit the conditions of this country better to adopt the parliamentary system of constitution, the British type of constitution with which we are familiar. The two Committees have agreed and the Provincial Constitution Committee has accordingly suggested that this constitution shall be a parliamentary type of Cabinet.

Some misunderstanding may arise on some of the items mentioned in Clause 9. Clause 9 provides four items under the note. The first one says, the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof. It means that the Governor is probably given powers in the case of a grave menace to the peace and tranquillity in the province, which, I may say, is not exactly the intention of the Committee. The Committee, in settling this question, intended to convey that the Governor shall have only the authority to report to the Union President about the grave situation arising in the province which would involve a grave menace to the peace of the province. It was not their intention that this power or authority, is to be exercised by the Governor which may perhaps bring a conflict between the Ministry and the Governor. The Governor having no control over the services, the authority of administration entirely vests in the Ministry and therefore, although there was considerable difference of opinion on this question on account of the prevailing conditions in the country,—some thought that it would be advisable under the present peculiar unsettled conditions in the country to give some limited powers to the Governor—eventually the Committee came to the conclusion that it would not be workable, that it would create deadlocks and therefore, the proper course would be to limit his powers to the extent of authorising him to report to the President of the Union. What steps, or what authority the President of the Union exercises would be a matter for the Union Powers Committee to provide in the Union Constitution. But, so far as the provincial constitution is concerned, it was agreed that this limited power of reporting only should be given to the Governor.

Then, you will see the second item in Clause 9, the summoning and dissolving of the Provincial Legislature (Clause 20 of this Part). This is a normal power which is given in every constitution to a Governor and therefore there is nothing special about it.

The third item provides for the superintendence, direction, and control of elections. In this matter, I think the Fundamental Rights Committee made a recommendation that in order to ensure fair elections, there should be appointed a Commission by the President of the Union Constitution, so that it should be above party influences and fair elections in all provinces can be ensured. This, I think, was adopted by this House when the Fundamental Rights were adopted and therefore this clause will have to be brought into line with the former resolution adopted by this House.

There is then the fourth item, the appointment of the Chairman and members of the Provincial Public Service Commission and of the Provincial Auditor General. In this matter also, the appointment of the Chairman and the members of the Provincial Public Service Commission is generally made on the recommendation of the Cabinet or Ministry.

Therefore, when we analyse Clause 9, practically the only powers left to the Provincial Governor is the power to report to the Union President when a grave emergency arises threatening menace to the peace and tranquillity of the province and the summoning and dissolving of the Provincial Legislature.

When we have dealt with Clause 9, we then come to the recommendations of the Committee which deal with the constitution of the legislature, whether there should be two Houses or one House. The Committee generally agreed that there should be only one House of Legislature. But it was also agreed that if any of the Provinces wanted a bicameral legislature, it should be open to the province to set up such a legislature, but that the constitution of the Upper House would be, according to the opinion of the Committee, on the Irish model, where a certain percentage is to be elected on functional representation and a certain percentage to be nominated and provision has to be made for election. Now, the recommendation of the Committee regarding the Second House is a departure from the existing Act in so far as half of the members are to be elected by functional representation. There will be representation in the Lower House for special interests such as women, labour, commerce, industry, etc. This appears to be a reasonable provision and is in accordance with the Irish model.

The Committee have given special attention to the appointment of Judges of the High Court. This is considered to be very important by the Committee and as the judiciary should be above suspicion and should be above party influences, it was agreed that the appointment of High Court Judges should be made by the President of the Union in consultation with the Chief Justice of the Supreme Court, the Chief Justice of the Provincial High Court and the Governor with the advice of the Ministry of the provinces concerned. So there are many checks provided to ensure fair appointments to the High Court. These are the special features. The principle settled by the Committee is contained in the memorandum and for the rest of the Constitution it was agreed that drafting should be made on the adaptation of the present 1935 Act, by making suitable alterations. Therefore, I move that this report of the Committee be taken into consideration and if the House agrees, the Report may be taken clause by clause.

Maulana Hasrat Mohani (United Provinces: Muslim): *[Sir, my Honourable friend Sardar Patel has presented the Report before you and with due respect to him I raise an objection to it. It is that till the Report on Union Constitution is presented before the House, consi-

*[English translation of Hindustani speech begins.

[Maulana Hasrat Mohani]

deration of this Report seems quite inappropriate. The reason is not this, as Patel Sahib has himself said, that it is not final and the mistakes, if any, could be rectified later on. If only verbal changes were intended I would never have raised this point. I want to tell you, and through you, my nationalist and national-socialist friends, who are present here, that my objection is a vital and far-reaching one. If you lightly pass over this objection, then I am sure you will have to repent this action of yours and regret it some day.

Looking around, I find that except Nationalist members no one else is present here. There was one Communist member from Bengal, but somehow he has been ousted. From amongst the Forward Blockists, Sarat Chandra Bose has resigned from the membership. Mr. Tripathi of U.P. and one Forward Blockist of C.P., though they have not resigned their seats, for some unknown reasons they are not present in the House. I feel it my duty to place the view-point of such of my friends before you.]*

The Honourable Sardar Vallabhbhai Patel: On a point of order. The debate is going on a wrong track and I do not understand what has the question of whether the Constitution shall be a Republican Constitution or not, to do with the Provincial Constitution and whether there should be a Dominion Constitution also has nothing to do with it because we are today settling the principles of a Provincial Constitution and when the question as to whether there should be a Dominion Constitution or Republican Constitution comes, Maulana Hasrat Mohani can move any amendment or say anything. To-day we deal with only the Provincial Constitution draft which can fit in with an Independent India which has nothing to do with Dominion Status, and which can fit in with the Republican Constitution according to the Resolution which has been passed by the Constituent Assembly. Therefore, he may not be allowed to cover a wide range which has nothing to do with our present motion.

Maulana Hasrat Mohani: *[Had there been some ulterior motives behind it, I would not have put it up in this way. For example, if I had done all this with communal feelings and dilatory tactics, I would have asked you to withhold this Report until the report on Minorities is put up before us. But in fact, the question is simply this that you should proceed on some principles and do not put up the Provincial Constitution before the Union Constitution is put before the House.

No doubt, Pandit Nehru has moved the Objectives Resolution of the Republic, but it has not been made clear as yet whether the proposed Republic would be of unitary type or of Federal type. Again it has not been as yet decided in case it is a Federal Republic, whether the Government would be centrifugal or centripetal.

If you do not accede to my request, my party will line up with the Leftist groups and with the aid of the Communists and Forward Blockists, it will compel you to accede to our demand. Let me explain this also in this way, that, unless there is some change in the Union

]* English translation of Hindustani speech ends.

*[English translation of Hindustani speech begins.

Constitution and the Constitution of the Union is not made satisfactorily, till then the condition of the Provinces will remain unchanged and, it will not go beyond provincial autonomy, and we will, as an Indian saying has it; "we would always remain shoe-makers that we were".

In the Report which Sardar Saheb has just now put up, he has very intelligently stated in it that they wanted to appoint Governors. You will see that with this word only, the whole constitution of the Union is defaced and distorted.

Even if we accept the suggestion of Sardar Patel, the clear meaning would be simply this that the Provinces would get Provincial autonomy only, and if this is so, I will say that all the years of your sacrifices, labours and the 'Quit India' Resolution, one and all will be rendered useless.]*

Mr. President: I think Maulana Hasrat Mohani's amendment is in order. It is open to the House to throw it out.

Maulana Hasrat Mohani: *[All the time you were telling us that we would establish an Independent Republic and parties shall be formed not on the basis of religion, but on socilalistic principles.]*

Mr. President: *[This is not the question. For the present, the simple question is whether the Report should be considered or not.]*

Maulana Hasrat Mohani: *[What I mean is this that you want to pass the Provincial Constitution by the back door.]*

Mr. President: *[You have already stated the reasons. You forget that this is not the occasion to discuss your Republic and all sorts of questions.

So far this amendment is concerned, you have already stated, the grounds on which you want to move it; and I feel that other questions should not be discussed.]*

Maulana Hasrat Mohani: *[Sir, I will conclude my statement within a short time. All the Forward Block and Communist members are absent, therefore, on their behalf, I will protect their rights, and if by your voting strength in this House, you pass anything as you like, then I will adopt other methods to protect their rights. Once again I submit that all your actions should be based on principles and that you should protect the rights of all.]*

An Honourable Member: On a point of order, Sir. Is the Honourable Member in order in calling this a packed House? Is it parliamentary? He may be asked to withdraw the expression.

Maulana Hasrat Mohani: I did not use any unparliamentary expression. I only said that somehow or other people here are all nationalists and as such were deaf. I did not mean any discourtesy to the House.

The Honourable Pandit Jawaharlal Nehru: *[Mr. President, if the Report of the Union Constitution Committee had been under consideration at this time, I would be standing here in a special capacity. But

]* English translation of Hindustani speech ends.
[ ] English translation of Hindustani speech.
*[English translation of Hindustani speech begins.

[The Honourable Pandit Jawaharlal Nehru.]

I rise now to remove the misunderstandings that have arisen in the minds of some of the members. It may be that I may not wholly succeed in my object. It is quite possible that I may fail to convince Maulana Hasrat Mohani who is rather a deep person and claims to be at once the representative and spokesman of both the Communists and Forward Blockists. It is quite obvious that if my fear comes true he would suffer from considerable perplexity. But what I intend saying is nothing very incomprehensible and technical. It is quite correct to say that we would be acting improperly if we took up the consideration of the Provincial Constitution without keeping in view the ideals we seek to realise and the goal we seek to reach. We have, it is true, taken up the consideration of the Provincial Constitution, first.

Six months ago this House passed a Resolution which placed before it the plan and the ideals. These were approved. When once the outline of anything has been drawn, the order in which the several problems involved therein are to be taken in hand, had to be decided. In this case it so happened that the question of the Provincial Constitution arose earlier and the Report of the Provincial Constitution Committee also was ready earlier. Consequently, members got sufficient time to study this Report. The other Report, however, has been sent to the members only six or seven days ago. Consequently, keeping in view the fact that the members would not have sufficient time to study it, it was considered proper for their convenience not to submit that Report to the House for the time being, but to present the Report of the Provincial Constitution Committee which had been already sufficiently studied. Honourable Members have all received the Report of the Union Constitution Committee. If the President permits, I am ready to present it to the House immediately. The only difficulty in doing so is that the members may complain that they had no time to study it sufficiently, and that even if time be given for studying it, it would mean the waste of two or three days in doing so now. It was in view of this that it was considered proper to present the report which was ready and had been thoroughly studied. The other report will also be presented to the House just as this one has been. All of you should know that there is no intention of concealing anything or acting in an underhand manner in following this procedure.

In the present report the term 'Governor' occurs. This has completely upset the Maulana. I admit that the term 'Governor' has come down to us from the previous regime and that our associations with it are not very happy. But at present we are not concerned with the question of terminology. We do not know whether our Constitution would be in the English or any other language. So far as the term itself is concerned, you are all aware of there being Governors in America as also of the powers and authority they wield. I, therefore, submit that this does not violate in the least the ideas and the principles we have in view. It is my submission that there is no question of principle involved in it. The only question is of the convenient work-

ing of this House. If you and Sardar Patel so desire, I am prepared to present the Report of the Union Constitution Committee to the House.]*

Mr. Mohd. Tahir (Bihar: Muslim): Mr. President, Sir, I rise to support the amendment moved by Maulana Hasrat Mohani, firstly on the basis of a logical formula, *viz.* what is true of the whole is true of the part. Sir, up till now we do not know as to what form of constitution this House will decide on regarding the Union of India. Certainly, the provinces are parts of India and unless we know the constitution of the Indian Union, it would not be fair to consider the principles of the provincial constitution. Just now, the Honourable Pandit Jawaharlal Nehru, Sir, has said that the constitution of the Indian Union is also ready and every member has got a copy of it. But, Sir, I would submit that having the copy of the constitution with the members is one thing and that taking of decisions by this House is another. Besides this, Sir, the Honourable Pandit Jawaharlal Nehru has just now said that he is even prepared now to put the principles of the Indian Union Constitution before the House, and that it was by chance that the principles of the provincial constitution have been placed before the House beforehand. This clearly indicates that he also realises that the consideration of the constitution of the Indian Union should be taken up first.

My second point, Sir, would be that we do not know anything about the Report of the Minorities Committee, the Tribal Area Committee, etc., and the recommendations of those committees are to be incorporated in the constitution. Unless those reports are received, it would not be fair to take up the consideration of the provincial constitution.

With these words, Sir, I support the amendment moved by Maulana Hasrat Mohani.

Shri Balkrishna Sharma (United Provinces: General): Mr. President, Sir, I rise to oppose the amendment which has been moved by Maulana Hasrat Mohani. When a minute before he was trying to act as a 'Khudai Fausdar', I was reminded of his very famous saying that he is either a Communist or a Communalist. (*Some Honourable Members*: "Both"). Now, he has become both a communist and a communalist and thereby he has tried to bridge the gulf between Karl Marx and Jesus Christ. The Maulana is a very great man. We have all looked upon him with reverence and respect all our life for his integrity of purpose and honesty, but I have always felt that he is one of those men who have always refused to work in a team. He is a man who is a solitary figure ploughing his lonely furrow. Even in the Muslim League which he joined after a great deal of confabulation, the Maulana, even though he was included in the High Command, remained a solitary figure. Now the amendment which he has moved is a very funny amendment, funny for the very simple reason that it really makes very little difference whether we consider the Union Constitution first or the provincial constitution first, because we have already got our

]* English translation of Hindustani speech ends.

[Shri Balkrishna Sharma]

objectives before us by a resolution of this House and anything that is not in consonance with that objective any member of the House is at perfect liberty to point out either in the model constitution for the provinces or in the Union Constitution, and therefore there is very little difference whether we consider the provincial constitution first or the Union Constitution first. The Maulana really raised a fundamental question as to whether we should have the provincial constitution in the nature of merely giving provincial autonomy to provinces or a republican constitution. If the Maulana thinks that the House will fall in line with him, he can certainly bring forward amendments to the provincial constitution, deleting the words which he does not like, making the Governor the President if he so likes, and giving all sorts and manner of powers that he wants to give to the provincial legislature. If his amendments are not accepted by this House, naturally it will not help him to bring in the Union Constitution for consideration first. Where is the difference, I fail to see. Let it be clearly understood that we have made up our minds not to follow any of the constitutions in a slavish way, neither the American Constitution, nor the British model, nor any other model. We are going to evolve a constitution according to our needs and we shall see to it that we do not fall a victim either to this or to that pattern.

The Maulana has talked glibly about the U.S.S.R. Perhaps the Maulana forgets the very great difference between the U.S.S.R. and this unfortunate land where the Maulana is trying to fly at my throat and I have been trying to fly at his throat. We have got to take into consideration the situation in which we are placed. I think that, if our country wants to evolve a constitution which is mid-way between a federation and a unitary form of government, we must be at perfect liberty to do so. In a country like ours, which is always inventing all sorts and manners of divisions—this fissiparous tendency is a historical tendency—I think we must be very careful that we do not give so much power to the provinces as would lead to further division of the country.

It does not make the slightest difference whether we consider the provincial constitution first or the Union Constitution first. If the Maulana thinks that the House will agree with him in making the Provincial Constitution a model republican constitution, he is at perfect liberty to place his views before the House, but if he tries to monkey with it, he will not succeed in doing so.

Sir, I strongly oppose the amendment which has been placed before the House by the Maulana.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to support the original motion, namely, that the Provincial Constitution be now taken into consideration. The amendment really is to the effect that the Provincial Constitution should not be taken up before the Report on the Union Constitution is considered. I submit, however, that the Provincial Constitution and the Union Constitution are two different things. It does not matter which constitution is taken first. If there are defects, if there are points of difference, if

there are points on which any Member feels any objection, it will be open to him to raise the same and move the necessary amendments in the House. As has already been pointed out the Union Constitution proposals are already circulated and so we know what the Union Constitution proposals are likely to be.

The House therefore has a complete picture of what the Union and the Provincial Constitutions would be like. I submit that on a matter like this we should not take the time of the House any further and the question as to which constitution is taken up first is quite immaterial. With these few words, I support the original motion.

Pandit Govind Malaviya: Sir, I move closure of this debate.

Mr. President: Closure has been moved. The question is:

"That the question be now put."

The motion was adopted.

Mr. President: The Mover of the resolution will reply to the debate.

The Honourable Sardar Vallabhbhai Patel: The amendment to the motion moved by Maulana Hasrat Mohani is that this motion should be taken up after the consideration of the Union Constitution Committee Report. The Maulana has perhaps seen the Union Constitution report as well as the Provincial Constitution report, because he has been closely following what is going on in this Assembly and he has seen the objectives resolution of this Constitution that has been passed in the initial stage. Now I ask the Maulana whether this draft motion which I have moved contravenes the fundamentals in any manner of that objective. If it does not contravene in any way the original resolution that has been passed by this House, I do not see how he could have any doubts whether this constitution shall be a Republican Constitution or a Shariat Constitution or a Democratic Constitution. The real point is whether it is better to stand on the legs or on the head and we prefer to stand on the legs. We start with the provinces and we will come to the top, but some people occasionally try acrobatic feats and it is open to them to do so. The Maulana says that the Mover has done some sort of a trick by cleverly moving this resolution. I do not understand what trick I have done nor do I understand where the trick lies. The simple question is whether the draft which has been moved by me should be considered or not. He does not show by any argument that this motion should not be taken today. He suspects that there must be something in the Union Constitution and if he finds anything in the Union Constitution Report, when the report is taken, he will have ample time and opportunity to make any suggestions or alterations or modifications. There is nothing in this motion which gives room for suspicion or doubt and a simple motion like this should not be used for the purpose of taking any more time of this House. As Mr. Naziruddin Ahmad made it quite plain it will lead to an unnecessary waste of time of the House. The two are separate.

[The Honourable Sardar Vallabhbhai Patel]

One does not encroach upon the province of the other and therefore, they can conveniently be taken according to the order in which the order of the business is settled and the motion therefore before the House should be adopted without any division.

Mr. President: The motion is:

"That the Constituent Assembly do proceed to take into consideration the Report on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April 1947."

To this an amendment has been moved:

"That the Report on the principles of a model Provincial Constitution be not taken into consideration before the Report on the principles of the Union Constitution."

I put the amendment to vote.

The amendment was negatived.

Mr. President: The amendment is lost. I will put the original proposition to vote.

The question is:

"That the Constituent Assembly do proceed to take into consideration the Report on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April 1947."

The motion was adopted.

Chapter I

CLAUSE—1

Mr. President: We shall proceed to take the report clause by clause.

The Honourable Sardar Vallabhbhai Patel: Now with your permission, Sir, I move the first clause of the report—Chapter I—the Provincial Executive:

"*Governor.*—1. For each Province there shall be a Governor to be eleted directly by the people on the basis of adult suffrage.

(NOTE.—The Committee were of the opinion that the election of the Governor should, as far as possible, synchronise with the general election to the Provincial Legislative Assembly. This may be difficult to provide by statute, because the Legislative Assembly may be dissolved in the middle of its term.)"

Now in this clause two important points are involved. The first thing is that for each province there shall be a Governor. That principle is an important one. The other important principle is that he shall be elected by adult franchise. Now in the Provincial Constitution you may have seen that very limited powers are given to the Governor and yet he has to be elected by a process which is very cumbersome and therefore the question may naturally arise that if the Governor has got limited powers, why do we go through the process of election which involves so much difficulty because an election in a province by the process of adult franchise is a very difficult job? Yet it is considered necessary because of the dignity of the office which a popular Governor will hold and naturally a Governor who has been elected by adult franchise of the whole province will exert considerable influence on the popular ministry as well as on the province as a whole. His dignity and status also demands that he should have the unanimous and general support of all the sections of the people in the country. Therefore, two principles are involved in this motion. One is the

appointment of a Governor considered necessary in all the provinces according to the Model Provincial Constitution Report and the other is adult franchise and therefore I move.

Mr. President: I have received notice of a number of amendments to this clause. Many of them are printed and have been circulated, but I am getting amendments even now. I do not propose to take the amendments which I am getting now.

An Honourable Member: With your permission, Sir, may I ask a question? Sardar Vallabhbhai Patel referred in the course of his speech to the fact that a joint meeting of the Provincial Constitution Committee and the Union Constitution Committee was held and that as a result of the deliberations of that Committee certain changes are to be made. May I know whether this clause was also considered and is it a fact that that Committee was of opinion that the election of Governor should not be held directly by adult franchise but he should be elected by the Provincial Legislature in accordance with the principle of proportional representation by a single transferable vote?

Mr. President: That is a question which the Mover may answer if he wishes.

Shri T. A. Ramalingam Chettiyar (Madras: General): I want one point to be made clear. That is whether this model constitution which has been framed for the provinces is the one which the Provinces will have to adopt necessarily or whether the Provinces are free to adopt them with such changes as they would like. This is a matter on which I would like to have elucidation.

Mr. President: All these questions will be replied to by the Mover if he wishes to answer them.

Dr. P. S. Deshmukh (C. P. & Berar: General): Sir, I would like to say a word about the amendments which have been received by you now. I would like to point out that although we were told to send the amendments early, the substantial motion has only just been made and it is only after a motion has been made that members are entitled to send any amendments. Therefore, I would request you, Sir, that these amendments which have been sent to you now and would be sent to you up to 6 o'clock today should be admitted and considered. It would be somewhat unfair not to admit them.

Mr. President: Do I understand, Dr. Deshmukh, that we should adjourn the House for allowing members to give notice of amendments which would be taken up later?

Dr. P. S. Deshmukh: No, Sir. I am suggesting that we should go on with the amendments already printed, but if there are any amendments which are sent in during the day they might also be considered. The very first clause has numerous amendments and it will take a long time to consider them; so no time will be lost in admitting the fresh ones.

Mr. President: If there are any amendments which you have given notice of and which, although not printed, members have had occasion

[Mr. President.]

to consider, then I will not stand in the way, but I will not admit amendments put before the House without proper notice, and giving opportunity to members to consider them.

Shri Mahavir Tyagi (U. P.: General): On a point of order, Sir.

Mr. President: The point of order arises on what?

Shri Mahavir Tyagi: I want to put a question to you with regard to the interpretation of the rules. Now, Sir, there is a rule that notice of amendments has to be sent one clear day in advance of the date on which the motion is made. I want to know if by the word "motion" the whole report is meant or each clause is a motion in itself. As far as I know, in our provincial legislature motion means a question put to the House or discussed before the House. Each question is a motion in itself. So, Sir, if I choose to send an amendment to, say, Clause 21 of this Report which will I expect come up day after tomorrow and give notice of an amendment today, I think, Sir, that amendment will be in order because there will be one clear day's notice.

Mr. President: Rule 32 lays down:

"Except as permitted by the Chairman, notice of any amendment to a motion must be given at least one clear day before the motion is to be moved in the Assembly."

The motion which has been moved was circulated and given notice of, I think, several days ago and members have had ample time to give 24 hours' notice of amendments. Therefore, I say, I cannot take up any amendment of which notice is given just now.

Shri Mahavir Tyagi: Sir, I was asking whether the moving of Clause 21 three days afterwards will be a motion in itself or not. The House will be in possession of that motion and be discussing it after three days. That being so, I submit I am entitled to bring in an amendment now because it will be more than one clear day in advance.

Mr. President: As I have said, if I get notice of an amendment in time for circulation to the members so that they may have an opportunity to consider it before coming to the House, I may accept it; but I cannot accept an amendment which cannot be printed and circulated to the members beforehand. If, however, notice is given now of an amendment to a motion which will come three days later, I do not mind it.

Shri Mahavir Tyagi: Thank you, Sir, my point is achieved.

Mr. President: We shall now take up the amendments.

Mr. Naziruddin Ahmad: Sir, I submit that copies of the amendments were received by us only this morning. The matters dealt with are of an extremely difficult and abstruse nature and we have had no sufficient time to consider the amendments. I submit, therefore, that we may please be given at least twenty four hours' time to go through the amendments and then get ready to say yes or no or offer observations. That is the only thing I ask for.

Mr. President: I understand these amendments were circulated last night?

Mr. Naziruddin Ahmad: But we have received them only this morning. Some of us, I understand, got them today on coming to the House.

Mr. President: I allowed members time up to yesterday evening to send in the amendments, and it has taken time to get them printed and circulated to the members. Some of them have received the copies rather late. If members think they have not had enough time to consider the amendments, we may put off their consideration. But we have about 40 minutes more, and I suggest that we may take up their consideration now. We may not be able to take up more than one or two amendments, and if there is any difficulty we shall consider postponing them.

Nawab Muhammad Ismail Khan (United Provinces: Muslim): These amendments were laid on the table only this afternoon and we have had no time to consider the bill in the light of these amendments and I think it is only right that the members should get an opportunity to study the bill in the light of the amendments and thereafter the amendments may be taken one by one.

Mr. President: I was under the impression that the amendments were circulated last night.

Nawab Muhammad Ismail Khan: We received this book only this afternoon.

Mr. K. M. Munshi: But most members received it last night.

Mr. President: It seems there have been some delays in circulating the amendments because the addresses of some members were not known to the office. It seems some members have not had these amendments until late this afternoon. I am entirely in the hands of the House as to whether we should consider the amendments now.

(After a pause.)

I now call upon Maulana Hasrat Mohani to move his amendment.

B. Pocker Sahib Bahadur (Madras: Muslim): I only want to remind you of the request I made yesterday, that arrangements should be made to render the speeches into English as a large number of members are not able to follow the speeches in languages other than English. Therefore, Sir, in view of the fact that Maulana is going to speak in Urdu, I would request that arrangements may be made to give us a rendering into English of the valuable speech which Mr. Maulana is going to make.

Maulana Hasrat Mohani: Sir, I move my amendment to this Clause No. 1. I think I will have some difficulty in expressing myself in a foreign tongue but to accommodate my friend from Madras, I shall try my best to express myself as best as I can. I move:

"That in Clause 1, for the words 'a Governor' the words 'a President' shall be substituted."

[Maulana Hasrat Mohani]

By this I intend to say that we have got an inherent right of all the members of all these constituent provinces to demand a Provincial Republic for every Province. What we have intended and what we thought and what we were expecting to get, we wanted and we thought that we will get a Union of Indian Republics. My friend Mr. Tripathi had moved an amendment in the last session of this Assembly that he wanted to introduce the word 'Socialist'. It did not have the support of the House. We will see to it afterwards. If we have got a Federal Republic, it does not matter whether you agree to make it a Socialist Republic or not. In the first instance, you may have a Nationalist Constitution and a majority of Nationalist members but I am sure that the tendency of the World is to become, everyone of us is becoming now, socialist minded and I think that the time is not far off when, as we expect, we will be able to form a solid group of leftists and I think that by the latest, in the next election, I hope that we will be able to capture the whole of the organization. If you now agree to make every province a Republic, I do not care whether you agree to make it socialistic or not. We will make it a socialist republic. But one thing I must say, you cannot shelve this question. You cannot say "We want only a Republic in the Centre. We will not allow any of these Provinces to become a Republic", and as I said, this is a trick when you say that in each Province there shall be a Governor. I say that it must be a President. If you accept the word 'President', then it means that you agree to make every Province a Republic. If you refuse to accept the word 'President', then it means that you are determined to retain those Provinces as mere autonomous Provinces. You grant only Provincial autonomy and nothing else. If that is your intention, I most strongly protest against this sort of treatment which if I am not using any strong words, I shall say, will be something like staging a farce on the people of all the Provinces, especially on my Province, the United Provinces. Here my friend Pandit Nehru says "you can introduce afterwards any amendment you like to the Union Constitution". I say I introduce this amendment here and now, and ask you to make this word 'Governor' 'President', so that you may not be able to refuse to reopen the whole thing on the occasion of my moving an amendment to the Union Constitution. Then the question of the Union Constitution will anyhow come in and this difficulty will crop up. My friend Sardar Patel also said there is no difference whether we call Governor or President. There is a great difference. Once you disallow my amendment, you will say 'No, we will have only Governor'. That means that you want to give us only Provincial autonomy. You do not want many of the Provinces to go even a single step further. I have read very carefully your Union Report. In this Union Report, page 12, Clause 9 says:

"The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects until otherwise provided by the Federal authority."

To this Clause 9, a note is added which says:

"In this respect the position of the provincial units is rather different. These have no executive power in respect of Federal subjects save as given by Federal Law."

In respect of the Indian States you say something. But you say the position of the Provincial units is different. They have no residuary power in respect of special subjects. You fix only the provincial subjects. And you ask us to accept this clause. We will not. Of course, you have got a majority. You can pass anything you like. But I ask in the name of justice and fairplay "What right have you got to deprive the provinces of India from aspiring to become republics of the Union of Federal Republics, and not only Federal Republics but Socialist Federal Republics at that"? This was moved in a former meeting of the Assembly. You did not accept that. But the position was quite different then. You were suspecting the Pakistan people might make mischief. But they have been separated now. Some Muslim Leaguers raised this objection: "Now that India and Pakistan have become two different things, what is the meaning of the 'All-India Muslim League?' All-India Muslim League means the Muslim League of India, *i.e.* of the minority Provinces. So, they said, "If you want to have a Muslim League, you can start one for Pakistan, where we the Muslims of the Muslim minority provinces can have no influence, except through the Council of the All-India Muslim League which according to the decision of Mr. Jinnah still exists and to which new members have already been elected. I am one of them from U. P. (*Interruption*).

Mr. President: Order, order.

An Honourable Member: Does the speaker think that this is the All-India Muslim League Council?

Maulana Hasrat Mohani: No, no. I am pointing out that I have nothing to do with Pakistan except as a member of the All-India Muslim League Council. Where is the harm if we take the Union Constitution first. You have deliberately put the Provincial Constitution here first. What is the meaning of that? By taking this model provincial report first you are doing us a very grave injustice. Of course, you can have it passed. But you cannot prohibit the provinces from demanding independence and becoming republics You have said "We want only a Unitary Republic". Then why have you introduced the word "Federation" in your Report here? It is simply to deceive the public. You fight shy of the word "Unitary". Therefore to have your way you have said "Federation". This is why you want to preclude the provinces from demanding republican government. But I tell you you cannot compel them. You cannot impose your authority on them. We want a Union of Socialist Republics and if you persist in imposing nationalism and a nationalist constitution on your provinces you will soon be swept off the face of the earth.

(Messrs. M. Ananthasayanam Ayyangar, Khurshed Lal, V. Muniswami Pillai, Dr. P. Subbarayan, T. A. Ramalingam Chettiar, Ajit Prasad Jain and R. K. Sidhwa did not move their amendments.)

Mr. President: These are all the amendments of which I have received notice in regard to Clause 1. As there was a wish expressed

[Mr. President]

by some members to bring in amendments and as I wanted to consider that wish, I have just allowed one amendment to be moved. The others have not been moved. That amendment will be considered tomorrow.

As regards the Union Constitution Report, I understand it has been already circulated to members and I would request members to send in notice of amendments to that Report by Thursday evening.

Now we adjourn till tomorrow at 3 P.M.

The Assembly then adjourned till Three of the Clock on Wednesday, the 16th July, 1947.

APPENDIX

No. CA.64/Cons/47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,
New Delhi, the 27th June, 1947.

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,
CHAIRMAN, PROVINCIAL CONSTITUTION COMMITTEE.

To

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

SIR,

On behalf of the members of the Committee appointed by the Hon'ble the President in pursuance of the resolution of the Constituent Assembly of the 30th April, 1947 to report on the principles of a model Provincial Constitution, I have the honour to submit the annexed Memorandum which embodies the recommendations of the Committee together with explanatory notes where necessary.

I have the honour to be,
SIR,
Your most obedient servant,
VALLABHBHAI PATEL,
Chairman.

CONSTITUENT ASSEMBLY OF INDIA

PROVINCIAL CONSTITUTION COMMITTEE

Memorandum on the Principles of a model Provincial Constitution

PART I

GOVERNORS' PROVINCES

CHAPTER I

The Provincial Executive.

1. Governor.—For each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage.

[*Note.*—The Committee were of the opinion that the election of the Governor should, as far as possible, synchronize with the general election to the Provincial Legislative Assembly. This may be difficult to provide by statute, because the Legislative Assembly may be dissolved in the middle of its term.]

2. Term of Office.—(1) The Governor shall hold office for a term of four years, except in the event of death, resignation or removal.

(2) The Governor may be removed from office for stated misbehaviour by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature is bicameral, by the Lower House of the Provincial Legislature, and to be tried by the Upper House of the Federal Parliament, the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned.

(3) The Governor shall be deemed to have vacated his office by continued absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months.

(4) The Governor shall be eligible for re-election once, but only once.

3. Casual vacancies.—(1) Casual vacancies in the office of Governor shall be filled by election by the Provincial Legislature on the system of proportional representation by means of the single transferable vote. The person so elected shall hold office for the remainder of his predecessor's term of office.

(2) In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, the President of the Federation may appoint such person as he thinks fit to discharge the Governor's functions until the Governor's return to duty or until the Governor is elected, as the case may be.

4. Age qualifications.—Every citizen of the Federation of India who, has reached his 35th year of age shall be eligible for election as Governor.

5. Disputes regarding election.—Disputes regarding the election of a Governor shall be enquired into and determined by the Supreme Court of the Federation.

6. Conditions of Governor's office.—(1) The Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his seat in that Legislature.

(2) The Governor shall not hold any other office or position of emolument.

(3) The Governor shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule . . . . .

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

7. Executive authority of Province.—The executive authority of the Province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or local or other authority.

8. Extent of the Executive authority of Province.—Subject to the provisions of this Constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws.

[*Note.*—The reference to special agreements in this provision requires a word of explanation. It is possible that in the future there may be Indian States or groups of Indian States desiring to have a common administration with a neighbouring Province in certain specified matters of common interest. In such cases, the Rulers concerned may by a special agreement cede the necessary jurisdiction to the Province. Needless to say, this will not interfere with the accession of the State or States concerned to the Federation, because the accession to the Federation will be in respect of Federal subjects, whereas the cession of jurisdiction contemplated here is in respect of Provincial subjects.

9. Council of Ministers.—There shall be a council of ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

[*Note.*—For the most part, the Governor will act on advice, but he is required to act in his discretion in the following matters:—

(1) the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof [clause 15(2) of this Part],

(2) the summoning and dissolving of thee Provincial Legislature (Clause 20 of this Part),

(3) the superintendence, direction, and control of elections [Clause 22, proviso (2) of this Part],

(4) the appointment of the Chairman and the members of the Provincial Public Service Commission and of the Provincial Auditor General (Part III).

It is to be noted that the Governor, under the proposed Constitution, is to be elected by the people, so that he is not likely to abuse his "discretionary" powers].

10. If any question arises whether a matter is one for the Governor's discretion or not, the decision of the Governor in his discretion shall be final.

11. The question whether any, and if so, what advice was tendered by the ministers to the Governor shall not be enquired into in any court.

12. Other provisions as to ministers.—The Governor's ministers shall be chosen and summoned by him and shall hold office during his pleasure.

13. (1) A minister who for any period of six consecutive montths is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(2) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor:

Provided that the salary of a minister shall not be varied during his term of office.

14. Conventions of responsible Government to be observed.—In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in Schedule . . . . . ; but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions.

[*Note.*—Schedule..... will take the place of the Instrument of Instructions now issued to Governors.]

15. Special responsibilities of Governor.—(1) In the exercise of his responsibilities, the Governor shall have the following special responsibility, namely, the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof.

(2) In the discharge of his special responsibility, the Governor shall act in his discretion:

Provided that if at any time in the discharge of his special responsibility he considers it essential that provision should be made by legislation, but is unable to secure such legislation, he shall make a report to the President of the Federation who may thereupon take such action as he considers appropriate under his emergency powers.

16. Advocate-General for Province.—(1) The Governor shall appoint a person being one qualified to be a judge of a High Court, to be Advocate General for the Province to give advice to the Provincial Government upon legal matters.

(2) The Advocate-General shall retire from office upon the resignation of the Prime Minister, but may continue to carry on his duties until a new Advocate-General shall have been appointed.

(3) The Advocate-General shall receive such remuneration as the Governor may determine.

17. Conduct of business of Provincial Government.—All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

18. Rules of Business.—The Governor shall make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of duties among Ministers.

CHAPTER II

The Provincial Legislature

19. Constitution of Provincial Legislatures.—(1) There shall for every Province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly; in the following Provinces, there shall, in addition, be a Legislative Council (here enumerate those Provinces, if any, which desire to have an Upper House).

(2) The representation of the different territorial constituencies in the Legislative Assembly shall be on the basis of population and shall be on a scale of not more than one representative for every lakh of the population, subject to a minimum of 50 for any Province.

The elections to the Legislative Assembly shall be on the basis of adult suffrage, an adult being a person of not less than 21 years of age.

(3) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting.

(4) In any Province where the Legislature has an Upper House, the composition of that House shall be as follows:—

(a) The total numerical strength of the Upper House should not exceed 25 per cent. of that of the Lower House.

(b) There should be within certain limits functional representation in the Upper House on the lines of the Irish Constitution, the distribution being as follows:—

one-half to be elected by functional representation on the Irish model;

one-third to be elected by the Lower House by proportional representation;

one-sixth to be nominated by the Governor on the advice of his ministers.

[*Note.*—Under the existing Constitution, Madras, Bombay, Bengal, the U. P., Bihar and Assam have two Houses and the rest one. It was agreed that the members of the Constituent Assembly from each Province should vote separately and decide whether an Upper House should be instituted for the Province. There is to be no special representation in the Legislative Assembly either for universities, or for labour or for women.]

20. Composition of Provincial Legislatures, etc.—The provisions for the meeting, prorogation and dissolution of the Provincial Legislature, the relations between the two Houses (where there are two Houses), the mode of voting, the privileges of members, disqualification for membership, parliamentary procedure, including procedure in financial matters, etc. shall be on the lines of the corresponding provisions in the Act of 1935.

21. Language.—In the Provincial Legislature, business shall be transacted in the Provincial language or languages or in Hindustani (Hindi or Urdu) or in English. The Chairman (where there is an Upper House) or the Speaker, as the case may be, shall make arrangements for giving the House, where he thinks fit, a summary of the speech in a language

other than that used by the member and such summary shall be included in the record of the proceedings of the House.

22. Franchise for the Provincial Legislature.—The Provincial Legislature may from time to time make provisions with respect to all or any of the following matters, that is to say,

(a) the delimitation of territorial constituencies;

(b) the qualifications for the franchise and the preparation of electoral rolls;

(c) the qualifications for being elected as a member of either House;

(d) the filling of casual vacancies in either House;

(e) the conduct of elections under this Constitution and the methods of voting thereat;

(f) the expenses of candidates at such elections;

(g) corrupt practices and other offences at or in connection with such elections;

(h) the decision of doubts and disputes arising out of or in connection with such elections;

(i) matters ancillary to any such matter as aforesaid:

Provided

(1) that no member of the Lower House shall be less than 25 years of age and no member of the Upper House shall be less than 35 years of age;

(2) that the superintendence, direction and control of elections, including the appointment of election tribunals shall be vested in the Governor acting in his discretion.

CHAPTER III

Legislative powers of the Governor

23. (1) If at any time when the Provincial Legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this clause shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Provincial Legislature, or if before the expiration of that period resolutions disapproving it are passed by the Legislature, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the Governor.

(3) If and in so far as an ordinance under this clause makes any provision which the Provincial Legislature would not under this Constitution be competent to enact, it shall be void.

[*Note*.—The *ordinance*-making power has been the subject of great criticism under the present Constitution. It must however be pointed out that circumstances may exist where the immediate promulgation of a law is absolutely necessary and there is no time in which to summon the Provincial Legislature. In 1925, Lord Reading found it necessary

to make an ordinance abolishing, the cotton excise duty when such action was immediately and imperatively required in the interests of the country. The Governor who is elected by the people and who has normally to act on the advice of ministers responsible to the Legislature is not at all likely to abuse any ordinance-making power with which he may be invested. Hence the proposed provision.]

CHAPTER IV

Excluded and Partially Excluded Areas.

[The provisions of this Chapter cannot be framed until the Advisory Committee has reported.]

PART II

The Provincial Judiciary

1. The provisions of the Government of India Act, 1935, relating to the High Court should be adopted *mutatis mutandis*; but judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed).

2. The judges of the High Court shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule.....

3. The emoluments and allowances of the judges shall not be diminished during their term of office.

PART III

Provincial Public Service Commission and Provincial Auditor-General

Provisions regarding Public Service Commissions and Auditors-General should be inserted on the lines of the provisions of the Act of 1935. The appointment of the Chairman and members of each Provincial Public Service Commission and of the Auditor-General should be vested in the Governor in his discretion.

PART IV

Transitional Provisions

1. Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor, duly elected under this Constitution, assumes office.

2. There should be similar provisions, *mutatis mutandis*, in respect of the Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House).

[*Note*.—These provisions are necessary in order that there may be a Legislature and a Government ready to take over power in each Province as soon as this Constitution comes into force.]

3. The Government of each Governor's Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities.

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Volume IV
No. 3



Wednesday
16th July
1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Price 5 Annas

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 16th July, 1947

The Constituent Assembly of India met in the Constitution H[illegible] New Delhi, at Three of the Clock, Mr. President (The Honourab[illegible] Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the Register:

1. Mr. Kishori Mohan Tripathi (Eastern States Group).
2. Mr. Ram Prasad Potai (Eastern States Group).

Shri Sri Prakasa (United Provinces: General): Sir, before you begin the proceedings of this afternoon I should like to bring to your notice what I regard as a serious breach of the privileges of the Members of this House. I found that tongas bringing in Members of this Assembly were not allowed to drive into the portico of this building. Till yesterday they were so allowed but today when our need for this convenience was greatest, as it was raining, a European officer was stopping the tongas outside the portico. When I asked him if members were expected to get drenched in the rain, he replied that those were his orders, that tongas were to be stopped outside and only cars were to be allowed inside the portico. I think, Sir, that this is a piece of snobbery which you, of all others can not tolerate.

Mr. President: I will ask the Secretary to look into the matter.

ELECTION OF VICE-PRESIDENTS AND OF MEMBERS OF COMMITTEES

Mr. President: I have pleasure in announcing that Dr. H. C. Mukerjee and Sir V. T. Krishnamachari are the only candidates who have been duly proposed and seconded for the office of Vice-Presidents and I accordingly declare them as duly elected Vice-Presidents of this Assembly.

As the House is aware it was decided to elect members to certain other Committees and I have to announce the results in regard to those elections also.

The following members have been duly nominated to the various Committees in accordance with the resolutions of this House of the 14th July, 1947:

1. *Credentials Committee*:
   Bakshi Sir Tek Chand.
   B. Pocker Sahib Bahadur.
   Sri Ram Sahai.

[Mr. President]

2. *House Committee* :
Ch. Mohd. Hassan.
Mr. Upendra Nath Barman.
Sri Jainarain Vyas.

3. *Steering Committee* :
Haji Saiyid Mohd. Saadullah.
Mr. Abdul Kadar Mohammad Shaikh.
Sri Surendra Mohan Ghose.
Sri Jagat Narayan Lal.
Acharya J. B. Kripalani.
Gyani Gurmukh Singh Musafir.
Sri Chengalaraya Reddy.
Sri Balwant Rai Mehta.
Diwan Chaman Lall.

4. *Staff and Finance Committee* :
Shri Bhavanji Arjan Khimji.
Shri K. Santhanam.

There being only as many candidates as there are vacancies in all cases, I have great pleasure in declaring these members to be duly elected to the respective Committees.

Mr. H. V. Kamath (C. P. and Berar : General) : Sir, on a point of order, Dr. H. C. Mukerjee and Bakshi Sir Tek Chand have not, I believe, signed the Register of this House and as such they are not eligible to be elected to the Committees until they have duly signed the Register.

Mr. President: They will begin to function only after signing the Register and as soon as they come here they will sign the Register.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION—*contd.*

Mr. President: We shall now go on with the discussion of yesterday's Resolution.

Kazi Syed Karimuddin (C. P. and Berar : Muslim) : Sir, I desire to raise a point of constitutional importance. Maharaja Nagendra Singh, representative of the Eastern Rajputana States is a member of the Indian Civil Service. His name is on this cadre. He has not retired and his services have not been terminated. Can a salaried servant of the Crown be a member of the independent sovereign Constituent Assembly of India? Is it not inconsistent on his part to owe allegiance to the British Crown and at the same time be a member of the sovereign Constituent Assembly of India? Under Section 25 of the Succession to the Crown Act, "If any person being chosen a member of the House of Commons shall accept any office of profit from the Crown during such time as he shall continue a member, his election shall be and is hereby declared to be void".

Mr. President: I understand that the particular gentleman is no longer working in the Defence Department of the Government of India and that he is on his way to take service in the Bundi State, perhaps as Dewan of the State. He has been returned.

Kazi Syed Karimuddin: He has not retired from service, nor have his services been terminated.

Mr. President: That is not a disqualification according to our rule
Yesterday Clause 1 was moved, and there was an amendment b
Maulana Hasrat Mohani. The resolution as well as the amendme
are now open for discussion.

CLAUSE 1—*contd.*

Mr. H. V. Kamath: Mr. President, Sir, yesterday we listened to
speech which I believe was the first of its kind ever delivered in th
House. It was a speech unique in more respects than one. It was i
the first place a jumble of nationalism, national socialism, republic
nism, communism and what not. It was unique for the vehemenc
with which it was delivered. In spite of all that, I listened to th
speech with the respect and attention which any utterance fro
Maulana Hasrat Mohani ought to command. We have known him
a veteran, as a hero of a hundred battles in the country's cause fo
freedom. Whatever political complexion he might be wearing toda
whatever political "choga" he might be putting on today, we hav
known him in the past as a valiant fighter for the country's freedom
We have not forgotten the days when he was with us in the Congres
when he was a close co-worker and associate of Mahatma Gandhi an
our other revered leaders. But the speech which he made yesterda
cannot escape our attention and our notice. The speech dealt so litt
with the amendment and so much with everything else besides, th
I for one was hard put to it to sift the grain from the chaff. Maula
Sahib thinks that by substituting the word 'President' for the w
'Governor' he would, as if by a wave of his magic wand, crea
socialist republic in every province. I for one fail to see how by su
tuting the word 'President' for 'Governor' such a transform
could be brought about. We know very well how even the Pres
of America is different from the President of France. We know
the Chancellor of Germany—the Reichskanzler-der-Führer—d
so much from the other Chancellors of Europe. Therefore, I do n
any point in this mere change of the word 'Governor' into 'Pres

Another point which he sought to make was about soci
Well, even Netaji Subhas Chandra Bose, whose Forward Bloc h
mention in the course of his speech, used to say times without nu
that in the immediate present our main task was the achieveme
the independence of India—a united, free, strong and indepe
India—and that only after the achievement of this independenc
labours and energies should be directed to the socialist reconstru
of a free, united, independent India. Of all people I least expe
that Maulana Hasrat Mohani as he is today would bring before
House the plea for socialism. I believe Maulana Hasrat Mohani is
pillar of the Muslim League today, and it is a historic fact that th
Muslim League has demanded and achieved the partition of India o
a communal basis—a basis which to my mind is the very antithesis o
socialism. If Maulana Hasrat Mohani stands before us today an
tries to preach socialism to us I would tell him "Physician, hea
thyself". It is not for members of an organisation who are committe
to a patently communalistic policy to come before us and advance th
plea for a socialist society unless they shed their communalism. I
does not lie in the mouth of members of such an organisation to plea
for socialism. We who have been guided by leaders like Mahatm
Gandhi, Pandit Nehru, Sardar Patel and Netaji Subhas Chandra Bose

[Mr. H. V. Kamath]

do not stand in need of instruction about socialism. If at all anybody stands in need of being taught about socialism, I should say it is the Muslim League which has been for the last so many years preaching a virulently communalist policy and today has achieved a certain measure of success. I for one would plead with Maulana Hasrat Mohani even today to reconsider his own attitude and his own approach to Indian politics. I would ask him "What about the masses in your own Pakistan? Will you call upon your own masses in Pakistan to join hands with the masses in the Indian Union—in our Hind, in our Bharat Varsha—on a socialist basis, shed your communalist 'choga' and policy and let us go forward to build a united, strong, independent, socialist India in a socialist Federation of one free world?" I do not wish to take any more time of the House. I only wish to reiterate that this amendment is a pointless amendment and that nothing would be gained by the substitution of the word 'President' for 'Governor'. After all we have reserved that term for the head of the Indian Union. There must be some way of discriminating between the head of the Indian Union and that of a province. On these grounds, I oppose the amendment of Maulana Hasrat Mohani.

Mr. President: If the Mover of the Resolution wishes to say anything in reply he may do so.

Maulana Hasrat Mohani (United Provinces): May I be permitted to say something?

Mr. President: The mover of an amendment has no right of reply.

Maulana Hasrat Mohani: The previous speaker was asking "How Maulana Hasrat Mohani become a socialist, he is a communalist, I want to say something by way of personal explanation.

Mr. President: I do not think the House is much interested in that personal explanation.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): Sir, I give my reply to the speech made by the Mover in support of his amendment. I note that he was anxious to say something a second time. He has moved an amendment to the effect that instead of 'a Governor' there should be 'a President' for each Province. In the Centre we have a President and, if in the Provinces also, there are to be Presidents, there will be confusion. These Governors are to be elected by adult franchise. Therefore we must not have the wrong notion that anything appearing in the new Constitution connotes the old Act as connected with the Constitution under which we are now functioning. This is a simple proposition in which there should be no misunderstanding or further discussion. I hope the amendment will be withdrawn.

Mr. President: The question is:

"That in Clause 1, for the words 'a Governor' the words 'a President' be substituted."

The motion was negatived

The Honourable Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, will you allow me to say a few words before you put this Clause to the vote?

Mr. President: I gave an opportunity to Members to speak on this amendment, but nobody desired to speak at that stage.

The Honourable Pandit Hirday Nath Kunzru: The discussion so far has been on the amendments. There has been no discussion on the clause as a whole.

Mr. President: I said definitely that both the Clause and the amendment were open to discussion and invited Members to take part in the discussion. When nobody rose to speak I thought nobody had anything to say on the question.

The Honourable Pandit Hirday Nath Kunzru: If you hold that no further discussion is permissible under the procedure adopted by you, I do not want to speak. But if it is still open to a member to offer any general remarks, I should be glad to avail myself of the opportunity.

Mr. President: I think the time for these remarks is over. Those who are in favour of the original proposition will please say 'Aye' and those against will say 'No'.

The motion was adopted.

CLAUSE 2

The Honourable Sardar Vallabhbhai Patel: Sir, I move Clause 2 relating to Term of Office.

"2. (1) The Governor shall hold office for a term of four years, except in the event of death, resignation or removal.

(2) The Governor may be removed from office for stated misbehaviour by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature is bicameral, by the Lower House of the Provincial Legislature, and to be tried by the Upper House of the Federal Parliament, the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned."

Dr. P. S. Deshmukh (C. P. and Berar: General): Sir, I have an amendment to Clause 1. It has not been considered. It is in the Supplementary List of amendments.

Mr. President: I am afraid there has been a mistake. There are a certain number of other amendments to Clause 1 of which notice has been received last night. I have not given an opportunity to Members who have given notice of those fresh amendments to move their amendments. I think I had better call upon them to move their amendments one after another. I do not think they should suffer on account of my mistake.

(Shri R. V. Dhulekar did not move his amendment.)

Dr. P. S. Deshmukh: Mine, Sir.

Mr. President: That comes under sub-clause (3) which will now be moved.

The Honourable Sardar Vallabhbhai Patel: I do not propose to move sub-clause (3). Then I move sub-clause (4) which becomes sub-clause (3) which runs thus:

"(3) The Governor shall be eligible for re-election once, but only once."

I move the three sub-clauses of this Clause for the acceptance of the House.

Mr. President: There are two amendments of Mr. Sidhwa.

Mr. R. K. Sidhwa (C. P. and Berar: General): I do not move them.

Mr. President: Mr. Santhanam may now move his amendment.

Shri K. Santhanam (Madras: General): Sir, I move:

"That in sub-clause (2) of Clause 2, for the words 'to be tried by the Upper House of the Federal Parliament' the words 'to be confirmed by the Upper House of the Federal Parliament after investigation by a Special Commission of that House' be substituted."

In the case of the Union Constitution, a similar procedure has been adopted for the impeachment of the President. There it is laid down that the Lower House shall make a charge and the Upper House shall appoint a Commission to investigate and after it is satisfied that the charge is proved, then, by a Resolution, the Upper House will confirm the charge. I have adopted the same procedure. Otherwise it will mean that the Governor will be tried by the whole Upper House. It will be inconvenient and damaging to the prestige of the province as the Governor is to be elected by adult franchise. I hope the House will accept this amendment.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, in the matter of omitting the sub-clauses, may I point out, Sir, that it would be better for the Mover, Sardar Vallabhbhai Patel, to formally move the sub-clauses as they appear on paper for adoption and then to get someone to move an amendment for their deletion where necessary. This is a report of the Committee and therefore the proper thing to do is for the Mover to move it as it is, and then allow an amendment for the deletion of the unwanted item.

Mr. President: The question has been raised that it is not open to the Mover to remove any particular clause which is contained in the report, that it can be deleted only by way of an amendment and that the Mover can then accept the amendment.

The Honourable Sardar Vallabhbhai Patel: The objection is more of a technical nature. I do not think it makes any substantial difference, but if the technicalities are to be satisfied, I have no objection. Then sub-clause (3) stands. In substance it makes no difference.

Mr. President: Pandit Pant will now move his amendment.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Mr. President, I move:

"That sub-clause (3) of Clause 2 be deleted."

The Mover is in agreement with me, so also a large body of opinion in this House. In fact, we had no desire to keep this clause ourselves. A similar clause found a place in the Draft Constitution of the Indian Union also, but when the matter was examined, it was found that it would not work, and so it was removed from the draft; you will not find it in the Report that has been circulated. Similarly, this clause also was scrutinised and it was found advisable to remove it. The clause says, "The Governor shall be deemed to have vacated his office by continued absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months". Who is

to determine what amounts to incapacity or failure to discharge his functions? Considering all these things, we came to the conclusion that the sub-clause will not work in actual practice. Besides, it was decided to bring the constitution of the provinces so far as possible in a line with that of the Central Constitution. Keeping all these points in view, it has been decided to omit this clause. I move that this sub-clause be omitted.

Mr. President: There are certain other amendments.

Mr. H. V. Kamath: President, Sir, I am now advised by our elder statesman that a two-thirds majority is enough and so I withdraw the amendment.*

Mr. H. V. Pataskar (Bombay: General): In view of the fact that sub-clause (3) is to be deleted, I do not want to move my amendment.

(Other Hon'ble Members who had given notice of amendments did not move them.)

Mr. President: Mr. Ayyangar, are you not moving any of your amendments?

Sri M. Ananthasayanam Ayyangar (Madras: General): No, Sir.

(Messrs. K. Santhanam, P. S. Deshmukh and H. V. Pataskar did not move their amendments.)

Mr. President: I think these are all the amendments of which I have received notice.

The clause and the amendment are now open for discussion. If any member wishes to make any remarks, he can do so.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, in regard to Clause 2, I feel some difficulty in agreeing to sub-clause (3) being deleted. Sub-clause (3) has certain good features. The other features are impracticable. So far as the good features are concerned, they are that the Governor shall be deemed to have vacated his office by continued absence from duty. This is a very desirable provision. If the Governor remains absent for a continued period of more than four months, the work of the province will come to a stand-still. It is my humble suggestion that we should retain this part of the sub-clause.

With regard to another part of the sub-clause, *viz.*, continued incapacity, this has not been defined. It will be very difficult to decide as to what is continued incapacity.

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*That in sub-clause (2) of Clause 2, for the words "the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned" the following be substituted:

"the resolution in the former case to be supported by not less than two-thirds, and in the latter not less than three-fourths, of the total membership of the House concerned."

The Honourable Pandit Govind Ballabh Pant: May I just have a word, Sir, in order to avoid unnecessary discussion? I should like to invite your attention to another amendment which is on the Order Paper, where I wish to move that the Deputy Governor should be appointed. That comes under Clause 3. It is No 8 on the Order Paper which was circulated in the form of a supplementary list.

Mr. Naziruddin Ahmad: It is said that an amendment on the lines of what I have suggested is already on the supplementary list, but we have no notice of any supplementary list whatsoever. I believe many Honourable Members have not seen it. If there is any amendment it should be moved along with these, for attention should be called to them together. If there is any amendment to that effect it would be a good amendment. I was however pointing out that the good feature in this sub-clause should be retained. But the condition as to continued incapacity is vague. That relating to "failure to discharge his functions" is equally vague and will lead to great difficulties.

With regard to the next sub-clause, I feel some difficulty. I do not desire to oppose this clause altogether, but I submit my difficulty for clarification or correction, if necessary. Sub-clause (4) says that the Governor shall be eligible for re-election once, but only once. I do not see the point that a Governor cannot be re-elected twice. Suppose there is a very good Governor, a very competent man and ready to do good to the people, he will be shut out for the second re-election by the last portion of this sub-clause. The sting of this sub-clause lies at the tail. There is no point in limiting the people's choice in electing a Governor. It is just like the chimney sweeper who has to go up inside a chimney in order to clean it and in order to go into it, he must be small enough but as soon as he gets experienced he becomes too big to get into it. I think the chimney sweeper test should not be applied to a Governor. I make only a suggestion for the Honourable Sardar Vallabhbhai Patel to give his consideration to this. I simply draw the attention of the House to what seems to be an absurd and untenable position, though I think it is too early to go into great details. Enough opportunity would be given to the House to give its verdict on the final draft. I therefore make a suggestion in the hope that those in charge should keep it in their minds.

The Honourable Sardar Vallabhbhai Patel: Sir, there is not much controversy about the motion that I have moved. About the third clause I had already suggested that I would not move it as I anticipated that there was going to be a suitable amendment in a subsequent clause. We found that if we retained sub-clause (3) difficulty would arise as to who is to judge the 'incapacity or failure to discharge his functions'. In order to avoid all these complications, an amendment has been tabled to the subsequent clause, which avoids all difficulties. Now I accept Pandit Govind Ballabh Pant's amendment. About the fourth sub-clause a suggestion has been made that the re-election should not be restricted for any term. In all if he is allowed to stand for election twice, he gets a period of eight

years. For the third re-election the sub-clause proposes to restrict candidature because according to the discussion that took place in the Committee it was suggested that the President, if he remains for two terms, may well establish his power to such an extent that perhaps somebody might suggest or some suggestions may be made that he has stabilized his position and it may be difficult to absolve him from the charge of having manœuvred, from his position, support for the third election. It was considered better to avoid any such insinuation against the Governor as well, as it was also considered that the eight years' period is a sufficiently long time. As the candidate for the Governorship will fairly be a man of substance, age, and experience, after the eight years' period he may better retire and give a chance to a younger man. I think the Committee has come to the conclusion after mature consideration. I think it is a better suggestion. Therefore, the motion that I have moved as modified by the amendment of Panditji should be adopted, and the amended clause as it stands should be accepted by the House.

I forgot to say that I accept Mr. Santhanam's amendment.

Mr. President: I have to put to vote the two amendments moved, one relating to sub-clause (2) of Clause 2 and the other relating to sub-clause (3) of Clause 2. The Mover has accepted both these amendments. So I put the clause as a whole to the House, but before doing that I had better take votes on the amendments also.

Mr. Santhanam's amendment is as follows:

"That in sub-clause (2) of Clause 2, for the words 'to be tried by the Upper House of the Federal Parliament' the words 'to be confirmed by the Upper House of the Federal Parliament after investigation by a Special Commission of that House' be substituted."

The amendment was adopted.

Mr. President: The other amendment is by Pandit Govind Ballabh Pant and it is as follows:

"That sub-clause (3) of Clause 2 be deleted."

The amendment was adopted.

Mr. President: Now, Clause 2, as amended, is put to vote.

Clause 2, as amended, was adopted.

CLAUSE 3

Mr. President: We will now go to Clause 3.

The Honourable Sardar Vallabhbhai Patel: Casual Vacancies. (1) Casual Vacancies in the office . . .

Mr. President: There is notice of an amendment that after Clause 2, another clause be inserted. I do not know whether it can be moved as an amendment. We shall put it in the right place. We shall go on with the clauses as they stand.

The Honourable Sardar Vallabhbhai Patel: I move:

"*Casual Vacancies.*—(1) Casual vacancies in the office of Governor shall be filled by election by the Provincial Legislature on the system of proportional representation

[The Honourable Sardar Vallabhbhai Patel.]

by means of the single transferable vote. The person so elected shall hold office for the remainder of his predecessor's term of Office.

(2) In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, the President of the Federation may appoint such person as he thinks fit to discharge the Governor's functions until the Governor's return to duty or until the Governor is elected, as the case may be."

In this, as was suggested in the course of the discussion of Clause 2, there is an amendment to be moved by Pandit Govind Ballabh Pant. Therefore, I move this portion and I do not propose to say anything more.

(Messrs. V. C. Kesava Rao, M. Ananthasayanam Ayyangar and Shibban Lal Saksena did not move their amendments.)

The Honourable Pandit Govind Ballabh Pant: I move, Sir, that for Clause 3, the following be substituted:

"There shall be a Deputy Governor for every province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence."

The first part of Clause 3, that is sub-clause (1), is incorporated in my amendment. In so far as it differs from Clause 3, it provides for a contingency which might arise in consequence of the adoption of the amendment which I moved a few minutes ago. The original clause provided that in case of casual vacancies occurring during the term of office of the Governor, the vacancy will be filled up by election. The legislature would be seized of the matter and the provincial legislature would elect a substitute Governor for the remainder of the term according to the system of proportional representation by means of the single transferable vote.

In the case of short term vacancies, however, which might occur, it was provided by sub-clause (2) that the President of the Federation would nominate a Governor to officiate for the permanent Governor. I think it would be unwise to impose this embarrassing duty on the President of the Federation. Besides, it would be somewhat repugnant to the principle of provincial autonomy. As Honourable Members are aware the provision in the constitution that has been devised for the Federation contemplates a Vice-President to be elected by the legislature after the general election. A Vice-President is elected so that in case any vacancy occurred or any occasion arose for another person stepping into the shoes of the President, a person might be readily available to discharge the functions of the President. By the amendment that I am proposing, I am suggesting a procedure that will be in accord with that already accepted for the Federation.

As Honourable Members are aware, in some of the constitutions abroad, a Vice-President is elected by the general electorate along with the President. It is not necessary to go through an equally cumbersome process here as the Vice-President will not have very heavy responsibilities to discharge and a second election in the course

of four years for the election of a substitute Governor for a short term would involve undue labour and worry and expense. So it is considered desirable that some simpler method should be prescribed. We have accordingly by this amendment suggested that the Deputy Governor should be elected by the legislature and he should be readily available to fill any vacancy that might occur during the term of office of the Governor whether the vacancy be temporary or permanent.

It is likely that the Governor may have to go abroad for important public business, that he may be deputed for diplomatic service of an important character for a short term or he may be required to perform other duties for a limited period which may not allow him to discharge his normal functions. For such occasions we should have a Deputy Governor to take his place. The question was raised by one of the Honourable Members when I moved my first amendment. This amendment that I have now moved furnishes the remedy. The amendment is straightforward and simple and I hope it will be unanimously accepted and adopted by the House.

Mr. President: Mr. Santhanam, you have an amendment.

Shri K. Santhanam: I do not wish to move it.

Mr. President: Mr. B. Das.

Shri Biswanath Das (Orissa : General) : I do not wish to move.

Mr. President: Dr. Deshmukh has given notice of an amendment to Clause No. 1. Do you wish to move it now?

Dr. P. S. Deshmukh: It is covered by Pandit Pant's amendment. I do not wish to move my amendment.

Mr. President: The Clause has been moved and so also the amendment of Pandit Pant. Those who wish to say anything with regard to the original proposition as also the amendment are now free to do so.

Mr. Naziruddin Ahmad: Mr. President, Sir, I regret having to come here for the second time in connection with these amendments. With regard to the amendment that has now been moved, it was not circulated to us. It was only when it was moved here that I discovered its existence. It is difficult for us to follow the implications of these amendments. The original clauses have been drafted very carefully by an expert Committee consisting of expert draftsmen, experts in Constitutional Law and our great statesmen together. When they have drafted the report after so much deliberation and care its amendment should be taken in a serious manner; I should think the task of following the clause and the amendment on the spur of the moment on obtruse constitutional questions, becomes for us, laymen, all the more difficult. I submit that an amendment of this serious character altering the basic character of the original clause should not be allowed without giving us some time to consider its repercussions on the clause itself as well as upon the whole report because upon these clauses the final Bill will be drafted for our final consideration. In a

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matter of this importance, I think some caution should be used and some time should be allowed us for considering them. I find that to the original clause a large number of amendments have been moved. I doubt not that if the amendment just now moved was circulated to the Honourable Members, many amendments might have been suggested.

In the circumstances, I would suggest that this clause should not be rushed with. Some little time, however small, which the House or you, Sir, might consider sufficient, should be given to us. I must make it plain that it is by way of co-operation that I approach the House and approach you, Sir, for a little time. I plead with the Mover of the Clause as well as the Honourable the Mover of the amendment, who are great figures of our country, for a little time. I would ask them to consider the position of laymen in constitutional law having to take decisions on important issues without having previously considered them adequately. That is a prayer which I wish to make so that it may be sympathetically considered and some time given to us to consider the situation.

Mr. President: Does any one else wish to speak on the clause as well as the amendment?

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. President, Sir, the question that the House has to consider is whether the original clause, or the clause sought to be substituted by the amendment, should be adopted by the House. I think the amendment should be accepted for various reasons which have already been mentioned by the Mover of the Amendment. It is very unwise to create a possible occasion for an election by this complicated procedure in the middle of four years. In order to avoid that, it is much better to have a Deputy Governor elected even along with the general election itself. Therefore, I have great pleasure in supporting the amendment that has been proposed. But I have one doubt as regards the system of proportional representation by means of the single transferable vote. I ask you, Sir, to consider the question whether that is an effective system when the object is only to elect one candidate. I can understand the efficacy of that system when you have to elect a larger number of candidates than one. But if the candidate to be elected is only one, I do not know how far this system would be efficacious in achieving its object at all. The object of having election by means of proportional representation by single transferable vote is to give representation to various groups or sections or views among the voters. If the candidate to be elected is ultimately only one, I doubt if it is wise to undergo this laborious process of proportional representation by means of single transferable vote. This is a matter to be considered by the House, particularly by the experts who have drafted this Report. They certainly must have thought about this point. I am afraid, in the first place, it has no effect at all so far as the object to be achieved is concerned, when the candidate to be elected is only one. But as I said, this is a matter to be considered by

the House, I have not given any amendment, but I hope this matter will be taken up for consideration by the drafters of this Report.

Sri M. Ananthasayanam Ayyangar: The last speaker seems to be under the impression that the Deputy Governor will have to be elected by votes of all the adults of the province. This, however, is not the case. The election will be done by the Provincial Legislature where the number will be only about 150 or 200. That being so it will not be a difficult matter at all. It is not a huge body; we have such elections by proportional representation by means of single transferable vote for various other bodies also. For example, in the case of the Council of State, the strength of the electorate is 3,000; in the case of a Provincial Legislature, I suppose the strength will not be more than, say 300. Therefore, this need not stand in the way of our having proportional representation by means of the single transferable vote. I think the amendment may be accepted.

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President, Sir, I am going to speak on the amendment. It deals with the filling up of a casual vacancy in the office of the Governor. It, however, does not solve the problem of a casual vacancy that may arise in the office of the Deputy Governor. The amendment says:

"There shall be a Deputy Governor for every province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence."

But what will happen if there are casual vacancies both of the office of the Governor and of the office of the Deputy Governor? In that case, there will be a dead-lock. There is no provision at all for such a case. For this reason, Sir, it seems to me that the clause as drafted originally is far better than the amendment. At every casual vacancy of the office of Governor, the Provincial Legislature may fill up that vacancy; but according to the amendment there will be a vacuum, there is no provision for filling up a vacancy if there are such vacancies both in the office of the Governor and in the office of the Deputy Governor. For this reason, Sir, the clause as originally drafted it seems to me, is preferable to the amendment.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, with regard to the submission made to the House by Mr. Pocker, the explanation why the system of proportional representation by means of single transferable vote has been inserted in this clause is clear enough. If this method of election were not introduced here in Clause 3, the result would be that a person would be elected as Deputy Governor by less than one half of the members voting. If it is by proportional representation, then by transfer of second vote, whoever succeeds will get one half *plus* one votes more than the number of votes cast for the others. That is why this system has become necessary.

As regards the difficulty put forward by Rev. Nichols-Roy, about both the Governor and the Deputy Governor disappearing from the

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scene simultaneously, it is very difficult to conceive of such a contingency at this stage. Even if we had a third man, he too may disappear. Therefore, at this stage, we can only fix the general principle. If by some sudden stroke of calamity, the Governor, the Deputy Governor and all the rest disappear, then the whole machinery will collapse. But we need not think of such far-fetched events. We hope the Governor will continue, if not, the Deputy Governor at least will continue, till the end of the term.

Srijut Rohini Kumar Chaudhury (Assam: General): Mr. President, Sir, the Committee which produced this Report was presided over by no less a person than the distinguished and revered Sardar Vallabhbhai Patel and we think full opportunity was given for discussion of each matter so that when the Report was before the House there would be no need for any change. I should not be understood to be opposing Pandit Pant or to criticise him, because physically, morally and intellectually I would not be equal to that task. (*Laughter.*) But I think it would be better and more helpful to us if we know what would be the normal functions of the Deputy Governor, when the Governor is not absent. Would his function consist simply in longing and praying for the absence of the Governor or for him to be incapacitated *i.e.*, for a casual vacancy? (*Laughter.*) That question, Sir, may please be borne in mind and duly considered.

Then, Sir, it is obligatory according to his amendment that there shall be a Deputy Governor in every province. Will this Deputy Governor be honorary or will he be paid? If he is a salaried man why do you compel a poor province like Assam or Orissa to maintain a Deputy Governor with all the costly paraphernalia which will be there?

Then, Sir, I am speaking on behalf of those who may aspire to become Governor of a province—but if—God forbid—a Governor should die immediately after the election (*laughter*) will the Deputy Governor who is elected only indirectly by the votes of a few people enjoy the same position as the Governor who was elected to the office by all the adult votes? It may be said that the Vice-President of the U.S.A. enjoys all the powers of the President but there he is elected by the whole country. So why should you give such extensive power to your Deputy Governor who is not elected by the entire adult votes but only by a few people? These are points to be considered and I hope a suitable reply will be given to these questions.

Mr. Debi Prosad Khaitan (Bengal: General): Sir, in trying to understand the various clauses of the draft Bill that has been placed before us we should remember what the Mover, Sardar Patel, said in the beginning that these clauses are not complete and final drafts but only enunciation of principles which we can approve of. And the principles that we approve of will again be brought before another Drafting Committee which will put them in proper shape and fill such

lacuna as may remain after the draft passes this House at the present sitting. In the original draft as placed before us it was stated that "the Governor shall be deemed to have vacated his office by continued absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months".

This was thought to be very uncertain and very vague, as to when and in what manner the Governor is to be deemed to be in continued incapacity to discharge his functions. Similarly what was meant by the expression "failure to discharge his functions"? It became very difficult to decide what authority would declare that a Governor was in continued incapacity, except in the case of illness. Similarly, "failure to discharge his functions" is again a very vague expression. One man may consider that the Governor was failing to discharge his functions while a large body of other persons and the Governor himself may think that he was not failing to discharge his functions. This has again to be read with sub-clauses (1) and (2) of Clause 3. There it was stated:

"Casual vacancies in the office of Governor shall be filled by election by the Provincial Legislature."

That is to say, there will not be a ready-made person capable of filling the office of Governor when a casual vacancy would arise. The election by the provincial legislature would necessarily take some time to carry out, and in the meantime the office of Governor would remain vacant without anybody to perform the functions of that high office. In sub-clause (2) again, which is to be read with Clause 2(3):

"In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, etc."

Supposing a Governor becomes ill and wants to take a holiday to some place and thinks that he will recover within three months but does not, it becomes very uncertain as to when the period will exceed four months and when it would not exceed four months. All these questions had to be seriously considered and a remedy was to be found, or at least it was thought that another remedy should be put before this House; and that is just what Pandit Pant has done, namely, that after each general election when the provincial legislature meets it would elect a Deputy Governor according to a certain process. Even now some lacuna still remains, namely, it is said that the Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of the office of the Governor. It has not been stated here as to what will be a casual vacancy, and who would determine whether there is a casual vacancy or not; whether it is the Governor himself that will determine it or some other authority will have to be duly considered by the expert draftsmen that are serving the Constituent Assembly.

An Honourable Member: Sir, is the Honourable Member in order in reading a written speech?

Mr. Debi Prosad Khaitan: I have no written speech; I am only looking at the clauses and the amendments and have to read them because I have not committed them to memory.

As I said, the expert draftsmen will have to consider when a casual vacancy occurs, which authority will determine whether a casual vacancy has occurred or not and whether the Deputy Governor—if this amendment is accepted—will fill the office of the Governor for the remainder of the term of his office or will simply act for the Governor in his absence for a short period. All these are difficult matters to consider; and if the principle that has been put forward by Pandit Pant is accepted the remaining details will have to be filled in and again brought up before this House for consideration. In the circumstances, I think the amendment of Pandit Pant is a good substitute for Clause 2(3) and sub-clauses (1) and (2) of Clause 3, and I hope the House will accept it.

Mr. H. V. Kamath: Sir, in order to meet the difficulty visualised by Mr. Rohini Kumar Chaudhury, we might, as we have proposed in the case of the Upper House, direct that members of the Constituent Assembly from each Province shall vote separately and decide whether a Deputy Governor should be appointed for their province or not.

Mr. President: The Mover may reply.

The Honourable Sardar Vallabhbhai Patel: Sir, there is not much to be said by me, because subsequent speakers have replied to the previous speakers. This is a simple clause relating to how casual vacancies in the office of Governor are to be filled and the proposal has been improved upon by the amendment that has been moved by Pandit Govind Ballabh Pant. Doubts have been raised as to what would happen in case both the Governor and the Deputy Governor disappear. In any constitution difficulties of this kind may arise but human ingenuity always finds a remedy when such abnormalities occur. The House may also be aware that this constitution will be adjusted or revised in the first three years, whenever necessity arose. Therefore, if any such unexpected or unforeseen difficulty arises, the legislature at that time will take care of itself and make provision in time to meet such contingencies. Therefore, I see no difficulty in accepting the amendment moved by Pandit Govind Ballabh Pant and I do not think it is necessary to make any more suggestions.

Mr. President: An amendment to Clause 3 has been moved. The question is:

"That for Clause 3, the following be substituted:

'There shall be a Deputy Governor for every province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence'."

The motion was adopted.

Mr. President: The question is:

"That Clause 3, as amended, be passed."

The motion was adopted.

CLAUSE 4

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move:

"Every citizen of the Federation of India who has reached his 35th year of age shall be eligible for election as Governor."

This is a very simple clause.

Mr. President: There are several amendments to this Clause.

Mr. K. V. Kamath: Sir, I am told on the highest authority that a man, or for the matter of that, a woman also,—as she too is eligible for election as Governor,—may attain to maturity and mellow wisdom even before the 40th year! I do not therefore wish to press my amendment.

Shri V. C. Kesava Rao (Madras: General): Sir, I do not wish to move my amendment.

Shri M. Ananthasayanam Ayyangar: Sir, I beg to move:

"That the following be added as sub-clause (2) of Clause 4 and the existing Clause 4 be renumbered as Clause 4(1):

'(2) No person holding any office, or position of emolument in the regular services of the Provincial Government or the Union Government or any local authority subordinate to the same shall be eligible for election as Governor'."

Sir, it is one of the generally accepted principles that a public servant shall not stand for any elected office and hence the need for incorporating this provision in the constitution. It is likely that for such an eminent office sometimes an over-zealous public servant may stand for election and some people may also allow him to stand. As a matter of fact, I wanted that even a person who retired from public service during the previous five years ought not to be allowed to stand for election as a Governor. That will be a proper safeguard. I do not think that a public servant, however great he might be as an administrator, is as competent as a public man devoted to public service will be and is expected to serve his province as a Governor. However, that amendment is not before the House and I am moving a lesser and more innocuous amendment that a public servant should not be allowed to stand for election as a Governor. Sir, I move.

(Messrs. Shibbanlal Saksena and Biswanath Das did not move their amendments.)

The Honourable Sardar Vallabhbhai Patel: Sir, I accept the amendment moved by Mr. Ananthasayanam Ayyangar.

Mr. Debi Prosad Khaitan: Sir, an age limit has been fixed for the Governor. May I know if there is any age limit for the Deputy Governor also?

(No answer was given.)

Mr. President: The question is:

"That the following be added as sub-clause (2) of Clause 4 and the existing Clause 4 be renumbered as Clause 4(1):

'(2) No person holding any office, position of emolument in the regular services of the Provincial Government or the Union Government or any local authority subordinate to the same shall be eligible for election as Governor'."

The motion was adopted.

Mr. President: The question is:

"That Clause 4, as amended, be passed."

The motion was adopted.

CLAUSE 5

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move:

"Disputes regarding the election of a Governor shall be inquired into and determined by the Supreme Court of the Federation."

I do not think this is a controversial clause and there is no amendment to it.

The motion was adopted.

Mr. H. V. Kamath: Sir, would it be too much to request you for a little recess, say half an hour to enable members to have tea?

The Honourable Sardar Vallabhbhai Patel: Is that an amendment? The House is only sitting for three hours and members could have had their tea and come.

Mr. H. V. Kamath: If we had a recess of half an hour for tea, we could sit till 6-30.

Mr. President: Members can go and take their tea as the proceedings of the House go on.

CLAUSE 6

The Honourable Sardar Vallabhbhai Patel: Sir, I move:

"6. (1) The Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his seat in that Legislature.

(2) The Governor shall not hold any other office or position of emolument.

(3) The Governor shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule. . . . .

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office."

You will see that sub-clause (1) provides that in case a person who stands for election as Governor and is a member, is elected, he has no option but to vacate his seat in the legislature. He automatically comes out of the Legislature and becomes the Governor. I think it is a proper provision. There can be no dispute about it.

Sub-clause (2) refers to the holding of other offices by the Governor. It forbids it. This is also necessary. We have provided for the acceptance of Mr. Ananthasayanam Ayyangar's amendment to the previous clause prescribing the qualifications necessary. This sub-clause is therefore very necessary.

Sub-clause (3) provides simply for residence and emoluments. It is not necessary to say anything about it. Provisional arrangement is made till it is fixed by the legislature.

Dr. P. S. Deshmukh: I do not wish to move my amendment.

Mr. M. S. Aney (Deccan States): May I make a few observations on this motion?

Mr. President: Yes, after the amendments have been moved.

Mr. R. K. Sidhwa: Sir, the amendment that stands in my name states that the salary of the Governor should form part of the Constitution. I am strongly of the view, particularly for maintaining the dignity, the prestige and honour of the Governors who will be Indians themselves hereafter, that the fixation of the salary should not be left to the caprices and whims of the provincial legislatures. Again, under the circumstances in which the Governors will be elected by adult franchise, it will be undignified to let the provincial legislatures, where party politics will prevail, sit upon the fixation of the salary of the Governors. I do feel, therefore, Sir, that the Constitution itself should provide as to what should be the salary and other emoluments of the Governors. I am quite prepared to grant that small provinces like Assam and Orissa need not pay their Governors the same salaries as the other provinces. This too may be put down in the Schedule. I feel that this matter should be reconsidered by the Provincial Committee. In this connection, I would point out that the Schedule stated to be there is not in fact there. The Schedule has to be considered by the Provincial Committee. I have mentioned in the amendment that the Schedule should state what salaries should be incorporated in the constitution. I have been told that my point will be considered by the Provincial Constitution Committee. Under the circumstances, I do not move this, but I desire to emphasise this point so that the Provincial Constitution Committee may bear it in mind when they consider the Schedule. I repeat, Sir, that in view of the fact that party politics will prevail in the provincial assemblies, we should see that the salaries of the Governors form part of the Constitution.

Mr. President: The Provincial Constitution Committee has already reported. I do not know if this point would be going back to it. I take it, it will be taken into consideration when this matter comes up again in the final form when the final Constitution is considered.

Mr. R. K. Sidhwa: Yes, Sir. I have been told also that it will be borne in mind.

Mr. President: As there are no amendments moved to this Clause, I call upon Mr. Aney to speak.

Mr. M. S. Aney: Sir, I have only a few observations to make in regard to this Clause. Sub-clause (1) says that the Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to have

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vacated his seat in that Legislature. This applies not merely to the Governor who is elected but also to anybody, the Deputy Governor for instance who might happen to be in the position of the Governor, in view of the provision made therefor in an amendment given notice of by my friend Mr. Govind Ballabh Pant. The case of the Deputy Governor who acts as Governor will also be covered by this Clause. But it is not so stated in the proposed amendment. It is not stated in the aforesaid amendment that the person who acts as Governor shall not be a member of the Legislature, although by virtue of his becoming a Governor he will be taken to have vacated his seat and a vacancy will arise and it will have to be filled. That is a consequence of this amendment. We should think over the matter and see if something can be done to make this position more clear. I have nothing more to add. This is one of the points that struck me.

Mr. President: Is there any other member who wishes to speak about this?

Mr. Naziruddin Ahmad: Mr. President, Sir, I feel some difficulty about Clause 6 which is under consideration. The first sub-clause says that the Governor should not be a member of the legislature, and if so, after election, he should be deemed to have vacated his seat Coming to sub-clause (2), it is provided that the Governor shall not hold any other office or position of emolument. We have already provided through an amendment moved on the floor of the House, of which enough notice was not given, that a candidate for Governorship should not hold any position of emolument anywhere, even under Government, or even under a local authority. To that extent, sub-clause (2) seems unnecessary.

Then, the other difficulty which I feel is that sub-clause (2) provides that the Governor shall not hold any position of emolument. The insertion of the word "emolument" would rather indicate that the Governor may hold a position which does not carry any emolument. As for instance, he may be a member of the municipal corporation, a director of a limited company and the like. I submit that the Drafting Committee which will sit over this report when drafting the final Bill should take this into consideration.

Then, coming to sub-clause (4), it has been provided that the emoluments and allowances of the Governor shall not be diminished during his term of office, but it does not say anything about enhancing the Governor's emoluments and allowances during his term of office. The obvious reason which led the Committee not to permit any diminution of his emoluments seems to be this that the Governor should not be made a plaything of politics, that the Governor's emoluments, his dignity and other things should be kept above party politics. If it is left to the legislature to enhance his emoluments, then although the Governor may not be a party to any attempt to enhance his emoluments, public comments would arise that he has been manipulating the thing from behind. I think the retention of a term like this in the

final draft would diminish the dignity and value attaching to that high office. With regard to the amendment moved to this clause, I think I should support that amendment that the legislature should have nothing to do with the fixation of the salary of the Governor.

Mr. K. M. Munshi: It has been withdrawn.

Mr. Naziruddin Ahmad: That was a good amendment, but I need not say anything further on the subject. This is a point, however which the Drafting Committee may keep before their mind.

These are some of the points which require careful consideration. Although I feel that this is not the proper time to go into great details, I make these suggestions for the consideration of the Drafting Committee.

Sri M. Ananthasayanam Ayyangar: I want to say a few words about what Mr. Aney said about this clause. He thought that when the Deputy Governor becomes the Governor during the latter's temporary absence, he would lose his seat in the legislature. The Deputy Governor becomes the Governor only when the Governor vacates his office. Under the amendment moved by Pandit Govind Ballabh Pant, the Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence. Should the Governor die or resign, the Deputy Governor becomes the Governor in which case he has no right to continue to be a member of the legislature. If on account of illness or absence, the Governor does not discharge his duties, the Deputy Governor will act in the Governor's place as Deputy Governor and not as Governor, and therefore his place in the legislature is not vacated.

Then as regards the observations made by the previous speaker in regard to sub-clause (2) which says the Governor shall not hold any other office or position of emolument. He says that the amendment I moved that no public servant can be eligible for candidature as Governor is comprehensive and therefore this sub-clause is not necessary. He has forgotten the difference between the eligibility of a candidate for Governorship and, after becoming Governor, his holding any other office. He may not be a public servant at the time of his election but he may hold any other office thereafter. The idea is that the Governor should be a full-time servant and must not hold any other office. That is the reason for this sub-clause.

Then as regards sub-clause (4). Very often a legislature which is opposed to the Governor will try to diminish and not increase his salary. Anyhow, I would prefer the word "change" substituted for the word "diminished" in this sub-clause.

The clause, as it stands, may be accepted.

Mr. President: I put the clause to the vote. No amendment has been moved.

The motion was adopted.

CLAUSE 7

The Honourable Sardar Vallabhbhai Patel: I move:

"7.—The executive authority of the Province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge, or officer or local or other authority."

I move this proposition for the acceptance of the House.

Mr. President: Mr. Ananthasayanam Ayyangar, you have got an amendment?

Sri M. Ananthasayanam Ayyangar: I have dropped it. I will reserve it for some other clause.

Mr. President: You are not moving so far as this clause is concerned. Very good.

Shri Biswanath Das: Sir, I move:

"That to Clause 7, the following proviso be added:

'Provided that the Federal Legislature shall contribute for such functions discharged in its behalf'."

This is an ordinary amendment and was probably left out owing to oversight. Honourable Members are aware of the fact that the Provincial and Federal Constitutions clearly lay down the respective functions and responsibilities. In the present clause the federation is authorised to call upon the Provincial Executive to discharge certain functions over and above their own work. In such cases it is but fair that the Federal Parliament should pay for the work done in their behalf by the Provincial Executive as the agents of the Federal Parliament. I claim this on two accounts. It is just and fair that the principal should pay for the agent in discharge of its agency work. Secondly, its responsibility cannot be complete unless the Federal Legislature finds its agency to carry on its work with its expense. The work in contemplation may relate to directions by the Federal Parliament or to work imposed on the Provincial Executive by means of Federal statutes. In such cases it is but fair that the principal must pay for the agency work. True it is that the Government of India Act had a similar section for discharge of its work by the Provincial Executive without any payment, but we are substituting a Federal system of Government in place of a Unitary type. I therefore hold that it is fair and necessary that this agency work should be paid for.

Mr. President: Clause 7 has been moved and the amendment to it is also moved. The original proposition and the amendment are open for discussion. Members who wish to make any remarks may do so now.

Shri Ajit Prasad Jain (United Provinces: General): The present clause says that the Executive authority of the province shall be exercised by the Governor either directly or through officers subordinate to

him. There is a corresponding clause as recommended by the Union Constitution Committee which says "subject to the provisions of this constitution the executive authority of the Federation shall be vested in the President". The present clause, that is, the one recommended by the Provincial Constitution Committee, follows more or less the lines of the Government of India Act, 1935, and there was a reason for this. Under the Government of India Act, 1935, there are some services which were under the control of the Secretary of State and they had to function under the authority of the Government but that distinction will cease to exist under the new constitution. I do not think that this phraseology is meant to perpetuate any distinction, but, at any rate, I believe that the recommendation made by the Union Constitution Committee is simple and much better worded and perhaps we shall be wiser in adopting that phraseology.

The Honourable Sardar Vallabhbhai Patel: There is only one amendment which Mr. Biswanath Das has moved, that the Federal Legislature shall contribute for such functions discharged in its behalf. I am afraid there is some misunderstanding about this. Otherwise, the amendment would not have been moved. He is under the impression that the functions refer to the Federation authority. What the clause contemplates is that the executive authority of the province shall be exercised by the Governor either directly or indirectly or through officers subordinate to him. It is only the executive authority of the province and not of the Federation. Therefore there is no question of the Federal authority being called upon to pay. It is only a misunderstanding or misreading of the clause which has actuated the amendment. Further this is practically a non-controversial clause. Therefore, I hope the House will accept it.

Mr. President: The amendment to Clause 7 has been moved. The question is:

"That to Clause 7, the following proviso be added:

'Provided that the Federal Legislature shall contribute for such functions discharged in its behalf'."

The amendment was negatived.

Mr. President: I now put the clause as originally moved:

"The executive authority of the province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or local or other authority."

The motion was adopted.

CLAUSE 8.

The Honourable Sardar Vallabhbhai Patel: I move:

"8. Subject to the provisions of this Constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the provincial legislature has power to make laws.

[NOTE.—The reference to special agreements in this provision requires a word of explanation. It is possible that in the future there may be Indian States or groups

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of Indian States desiring to have a common administration with a neighbouring province in certain specified matters of common interest. In such cases, the Rulers concerned may by a special agreement cede the necessary jurisdiction to the Province. Needless to say this will not interfere with the accession of the State or States concerned to the Federation, because the accession to the Federation will be in respect of Federal subjects, whereas the cession of jurisdiction contemplated here is in respect of Provincial subjects.)"

I move this for the acceptance of the House.

Mr. President: Mr. Santhanam, you have given notice of an amendment.

Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, I think that this clause requires fuller consideration. So far as the main clause is concerned, namely that the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws, no exception can be taken.

Mr. President: Shall we not take this up after the amendments have been moved?

Sir Alladi Krishnaswami Ayyar: What I was going to move was a postponement of the consideration of this clause for tomorrow morning, if that is possible.

Mr. President: That may be possible. But I think it would be better that the amendments are moved so that the members may have an opportunity of considering the main clause and the amendments.

Sir Alladi Krishnaswami Ayyar: I shall then reserve my remarks.

Mr. President: Yes.

Shri K. Santhanam: Sir, I beg to move:

"That in Clause 8, for the words 'Subject to the provisions of this Constitution and of any special agreement' the following be substituted:

'Subject to such restrictions and extensions as may be provided in this Constitution'."

Sir, as Sir Alladi has already remarked, ordinarily the executive authority of each province extends only to those matters with respect to which the provincial legislature has power to make laws. The point of my amendment is that an extension should not be done by the province on its own authority. It should be done only through a provision specially inserted in the federal part of the constitution, as to how far a province can enter into agreement with a State or a neighbouring province and make an extension of its authority. Otherwise the whole Union will be reduced to chaos. The Central Ministry may not have power to prevent it and may be in great difficulty. Therefore, I want to restrict the power and scope of any such agreement to the limitations imposed by the constitution and therefore the agreement should be subject to such restrictions as may be provided within the Constitution. Beyond the constitution, there should be no power to any province to make any agreement with a State or even a neighbouring province. It is only to draw attention to this important point that I have tabled my amendment.

Of course, if as Sir Alladi has suggested, this is postponed and a better draft provided, I have no objection. I only want that this clause should not be left as it is so that the provinces may think that they can deal with the neighbouring States just as they please and come to any agreement with them with or without the consent of the Federal Government. In such a case, the permission of the Federal Government should be necessary. Not only permission of the Federal Government, but even the permission of the Federal Legislature in certain matters should be necessary. In what cases agreements should be subject to the approval of the Federal Government and in what cases it should be subject to the authority of the Federal Legislature, all these things should be provided in the Federal part of the constitution. It is only to draw attention to this important point that I have tabled my amendment.

Sir Alladi Krishnaswami Ayyar: Sir, I have got a draft ready. Mr. Santhanam's amendment is an innocuous amendment. You may make any agreement or provision you like. It does not finally settle the question. There may not be any objection to that form because it commits us to no particular principle. But if really, the object is to tackle the question and to enable the provincial executive to take up the administration of subjects under the sanction or in pursuance of any agreement with the States, special provision may have to be made. If you will permit me, Sir, I shall move an amendment, or at any rate, I will make my position clear with reference to the substance of what I have noted down even if it be not moved.

Mr. President: I will give you an opportunity. There is only one more amendment and after that amendment has been moved, I will give you an opportunity.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States Group): *[Mr. President, the amendment which I am going to move is to Clause 8. The note connected with the said clause says at one place:* "In such cases, the rulers concerned may by a special agreement cede the necessary jurisdiction to the Provinces". I desire that wherever the word "Rulers" appears in the note the word "State" should be substituted. So far, the word "State" has been used everywhere in this note. Now when the States are going to have responsible government and in some states it is being established, I wish that the word "Rulers" should not be used, but the word "State" instead, for this word includes both the Rulers and the ruled. The contemplated agreement should be made with the consent of both the Rulers and the people. This is the purpose of my amendment. I think Sardar Patel will have no objection to this, for the word "State" is more dignified here than the word "Rulers".]*

Mr. Gopikrishna Vijayavargiya (Gwalior): *[The amendment moved by Mr. Gokulbhai Bhatt, seeking to substitute the word "Rulers" by "State" is necessary and ought to be accepted.]*

[ ] English translation of Hindustani Speech.

The Honourable Pandit Govind Ballabh Pant: Mr. President, although this is a very trivial point, still as it is relevant, and I would like to be enlightened on that. Mr. Bhatt's amendment relates to a word which appears in a note annexed to Clause 8. Is the note a part of this memorandum? Is it open to the members to move amendments to the wording of the note or to anything appearing in the note? I have not considered the note as an integral part of the clause. It is nothing but explanatory. I personally think that one need not worry too much about the language of the note. If the original clause is deleted, the note will fall. If the original clause is amplified, the note may not remain consistent with the amended clause. I would like to know whether you consider that amendments to notes are admissible and can be considered.

Mr. K. M. Munshi: Sir, I support my friend Sir Alladi that this clause requires reconsideration. As it is, it reads:

"Subject to the provisions of this Constitution and of any special agreement, the executive authority of each Province shall extend to the matters with respect to which the Provincial Legislature has power to make laws."

But the insertion of the word 'of any special agreement' without any further qualification would go to show that it would be competent to the Provincial Legislature to acquire the power to make laws, not by virtue of this Constitution, but by any special agreement it may enter into. That might conceivably lead to great complications. Therefore, I submit that this requires consideration, and time should be given till tomorrow to put this into shape. It may possibly touch External Affairs too.

Mr. President: As there is a desire expressed by some members that further consideration of this clause be postponed till tomorrow, I would like to have the views of other members if they wish to say anything on that point. I would not like to rush with it if there is a wish on the part of any considerable number of members to postpone discussion.

Sir Alladi Krishnaswami Ayyar: Sir, I support the motion of Mr. Munshi that the consideration of this matter be adjourned till tomorrow. But I would like to say a word in support of my proposition. It is this, Sir, that the Province as a unit, has certain defined rights and duties under the Constitution. You provide for the Province taking upon itself the administration of certain subjects at the instance of a State. It is an extra-Provincial sphere. If that is so, is it to extend to the Legislative, Executive or the Judicial sphere and to what extent is that agreement to be supported? In a case like this, it is a matter for Federal intervention, which is necessary. These are matters which require very careful consideration and we cannot merely by adding a clause 'subject to some agreement' give a *carte blanche* for any agreement that might be entered into between Provinces and States in the legislative, administrative or judicial sphere. Therefore, Sir, I support the motion of Mr. Munshi that the consideration of the whole matter may be adjourned until tomorrow morning. I have given

notice of an amendment. I hope that it will be treated as being in time because I gave it at 2 o'clock this afternoon. It reads as follows:

"1. In paragraph 8 of Chapter I, *delete* the words 'and of any special agreement'

2. After paragraph 8 of Chapter I, *insert* the following paragraph:

'8-A. It shall be competent for a Province to undertake the legislative, executive or judicial functions vested in an Indian State under an arrangement made in that behalf with the State concerned, provided, however, that the arrangement relates to the class of subjects falling within the jurisdiction of the Province as a member of the Indian Union.

On such an arrangement being concluded, the Province may, subject to the terms of the agreement, exercise the legislative, executive and judicial functions through the appropriate authorities of the Province'."

If you want to have a provision, it should be a full provision on these lines. If on the other hand, the idea is to postpone until the whole question of Union Constitution is considered, then it is another matter but I do not think it will be possible to provide for it by means of a phrase or addition of a sub-clause in the body of the section. That is my idea of the matter and I have already stated that the consideration of the whole matter may be adjourned till tomorrow morning.

The Honourable Sardar Vallabhbhai Patel: May I suggest that this involves some complicated points of law and requires further consideration as suggested by Sir Alladi? I suggest that a Committee of two or three lawyers might be appointed to consider this question and thrash out if an amendment to or modification of the present clause is necessary so that we may find it easy to tackle it tomorrow when it comes up.

Chaudhri Khaliquzzaman (United Provinces: Muslim): I support it.

Mr. President: Will you suggest the names?

The Honourable Sardar Vallabhbhai Patel: Sir Alladi, Dr. Ambedkar, Mr. Munshi and Mr. Chundrigar.

An Honourable Member: May I request that as the subject relates to Indian States, States Representatives also might be included?

Mr. K. M. Munshi: I propose the name of Sir B. L. Mitter.

Mr. Mohammad Sheriff (Mysore): I propose that Sir Arcot Ramaswamy Mudaliar's name may be included in the proposed Committee. This matter requires very careful consideration as it involves the interest of the States and since we represent the States, we would like to have a considered say in the matter. I request the consideration of this matter be postponed for the present and the Committee which is to be constituted should thrash out all the points and for this purpose I suggest that the name of the Mysore Dewan be included in the Committee.

Mr. President: We have got six names altogether, four suggested originally and two other names have been added—Sir B. L. Mitter and Sir A. Ramaswamy Mudaliar. I take it that the House accepts the suggestion that this clause be referred to a Sub-Committee and the report of the Sub-Committee be put up day after tomorrow. We shall

[Mr. President]

go on with the other clauses and take this up day after tomorrow. There was one question raised by a member with regard to the notes, whether the note also forms part of a clause. I do not think the notes form part of a clause. That is for explanatory purposes and no amendment need be moved to any of the notes.

Mr. Debi Prosad Khaitan: I want to make one suggestion. With regard to your Ruling that the notes are not considered to be part of a Resolution, may I draw your attention to the note to Clause 9 and perhaps that may have to be considered as part of the Resolution. It reads—"For the most part, the Governor will act on advice, but he is required to act in his discretion in the following matter—" I would submit that the general statement need not be made and it may apply only with regard to this note.

The Honourable Pandit Govind Ballabh Pant: The note in Clause 9 refers to certain sections which are to follow thereafter. It is not part of the clause at all.

Mr. S. V. Krishnamoorthy Rao (Mysore): Sir, while this Committee considers this Clause 8 tomorrow, will it take into consideration the obverse possibility of certain Provinces entering into agreements with a State in respect of certain matters and cede certain powers to the State in administration of those matters? Will the Committee consider this aspect of the question also?

Mr. President: Whenever that question arises, we shall consider it. The consideration of this clause is adjourned to day after tomorrow and we shall now pass on to the next clause.

Mr. N. V. Gadgil (Bombay: General): It is already past 5-30, and it will be better if we adjourn now and meet tomorrow. We have done good work today.

Mr. President: Is it the wish of the House that we adjourn now? (*Honourable Members*: 'Yes'.) The House seems to be in a holiday mood. We adjourn till 3 P.M tomorrow.

Before we disperse, I would like to make an announcement. It has been brought to my notice that the time I have given for sending in amendments to the Union Constitution, *i.e.*, till 5 P.M. tomorrow is too short, and some members want this time to be extended. So I extend the time till Friday evening at 5 o'clock.

The Assembly then adjourned till 3 P.M. on Thursday, the 17th July, 1947.

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No. 4



Thursday,
17th July
1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 17th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi at 3 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION—*contd.*

Mr. President: Yesterday we referred Clause 8 of the Report on the Principles of a Model Provincial Constitution to a small Committee. I understand the Committee has been able to arrive at some conclusion and it has made a report. The Report will be circulated today and the clause will be taken up tomorrow. We will now take up Clause 9.

CLAUSE 9

The Honourable Sardar Vallabhbhai Patel (Bombay: General): I move Clause 9. It reads:

"There shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

This clause provides that there shall be a Council of Ministers who will aid and advise the Governor in the exercise of his functions, but there is an exception in which certain reservations are made—where, according to the constitution proposed, he is required to exercise the functions or any of them under his discretion. About those matters there will be reference in subsequent clauses and therefore the Note is merely explanatory. I shall therefore simply move Clause 9 without the Note or clauses under the Note because they are provided for in the other clauses. Sir, I move Clause 9.

Mr. President: I have received notice of a number of amendments to this clause. I would like to know how many are proposed to be moved.

Shri V. I. Muniswami Pillay (*Madras: General*): The *Minority* Committee's Report has not yet come and I am not therefore moving my amendment just now.

(Messrs. R. K. Sidhwa, H. J. Khandekar and H. V. Kamath did not move their amendments, and other members who had given notice of amendments were absent.)

Mr. President: As regards the amendment given notice of by Mr. Pocker Saheb Bahadur, it is an amendment to an amendment

[Mr. President]
which has not been moved. It cannot therefore be moved. As none of the amendments has been moved, the original clause which has been moved is open for discussion. (*After a pause*) As no one desires to speak on it I will put the clause to vote.

The question is:

"That Clause 9 be adopted."

The motion was adopted.

CLAUSE 10

The Honourable Sardar Vallabhbhai Patel: Sir, I move that Clause 10 be adopted. It runs as follows:

"If any question arises whether a matter is one for the Governor's discretion or not, the decision of the Governor in his discretion shall be final."

Some doubts have been raised about the language, but I think if the principle is accepted the question of language may be attended to at the time when the final draft is made. I think there will be no objection on the ground of any defect in the proposition as a principle. Sir, I move.

The motion was adopted.

CLAUSE 11

The Honourable Sardar Vallabhbhai Patel: Sir, I move that Clause 11 be adopted. It runs as follows:

"The question whether any, and if so, what advice was tendered by the Ministers to the Governor shall not be enquired into in any court."

Obviously the advice tendered by a Minister to the Governor cannot be a matter to be taken into the judicial court. So it is a simple clause which requires no explanation. Sir, I move.

The motion was adopted.

CLAUSE 12

The Honourable Sardar Vallabhbhai Patel: Sir, I move that Clause 12 be adopted. It runs:

"The Governor's Ministers shall be chosen and summoned by him and shall hold office during his pleasure."

This also is a proposition which requires no elucidation and I think there will be no controversy on it. Sir, I move.

Mr. Aziz Ahmad Khan (United Provinces: Muslim): *[Mr. President, the Resolution which is before you says that the Governor shall appoint his own Ministers and they shall continue as such at his pleasure. I move the amendment to the Resolution that the Governor's Ministers shall be elected by the Assembly by means of the single non-transferable vote. The Resolution moved by the Honourable Sardar Patel does not follow the

*[English translation of Hindustani speech begins.

English parliamentary system of appointing the Ministers. According to the English constitution, after the general elections are over, the number of parties in the House of Commons is ascertained and they try to find out which is the largest single party; or whether there is any such party which combining with other parties can become dominant. This is the party which is authorized to appoint the Prime Minister. He recommends the names of his colleagues, who on his recommendation form the Cabinet. This is the method which has been proposed for our constitution as well. But the method which I am advocating in my amendment, is not a novel method. There are many places in the world, where this method is prevalent. For instance, Sir, if you enquire, it would be found that today this system is prevalent even in America. The appointment of Ministers is not made by nomination. Here individual vote is taken and this is the way in which Ministers are elected. Similarly, Ministers are elected in Switzerland and Austria. Sir, if you think over it, you will find that in all countries where religious groups and sectional interests exist, this system has been adopted, in order that all the parties on whose behalf the Ministers would govern should have a hand in their appointment, to secure the confidence of every party in the Cabinet. After mature consideration, I am convinced that the English system of democracy does not suit India. We have witnessed the result of this system of democracy, which has caused disturbances and bloodshed in this country. Had the system of Government been the product of our own genius, most probably such mutual hatred and differences would not have been created or intensified. Therefore it is in the fitness of things that the Ministers should be elected by general votes. This system will have the advantage that the Ministers will have sympathies of their voters. This system will be consistent with the principles of democracy. But if this is not accepted and the English system is adopted then I am afraid it would not suit us.

Sir, very few of the present parties are based on any political principles. Most of them depend on religious faith. These religious groups have existed for centuries and have continued as such from time immemorial. It is known to one and all that the untouchables are living here for scores of centuries. It is absurd to think that no sooner the constitution is framed, the religious groups will disappear and parties will be formed on political and economic principles. It would be a dangerous experiment to think of planting English system of democracy, where party affiliations are based exclusively on political principles or of creating those conditions here. Countries like Austria and Switzerland, where they had their differences, have adopted this system of election for the Cabinet with success.

Naturally, whenever a person votes for electing a particular candidate as Minister, he has at least some expectations from him for the future and he (the Minister) in return shall do at least some good to him. Therefore, it would be much better to adopt such a system for India. Due to English education, we could not develop any system of our own. The English people thought that the system with which they have achieved this end, should be applied to India also to attain its object. They acted accordingly and succeeded in their endeavour. We

[Mr. Aziz Ahmad Khan]
should discontinue the methods adopted by the English people and should try to adopt a better system. I am sure, that the election of the Ministers by general votes would be much better. Therefore, I hope that my amendment will be accepted by the House.

One word more. When the Resolution was about to be moved, we were not given opportunity to give much thought over it, otherwise the amendment could be more properly drafted. Therefore, you need not care for the words of my amendment. As a matter of fact you should not look to the details of my amendment. If you agree with the principles underlying my amendment, the confusion about the details will automatically disappear. Please look to the principles of the amendment. In the original Resolution, there is no mention of the nomination of the Ministers, nor is there any mention of their election in the amendment. Sir, if you would approve the principles underlying my amendment, then at the time of the final draft, the whole thing can be put in proper form.]*

K. T. M. Ahmed Ibrahim Sahib Bahadur (Madras: Muslim): Mr. President, Sir, I beg to move:

"That at the end of the amendment to Clause 12 (just proposed by Mr. Aziz Ahmed Khan), the words 'and shall be responsible to the Provincial Legislature' be added."

This is a very simple amendment based on the fundamental principles of all democracies. The Ministers, Sir, should be responsible to the Legislature. That is a very fundamental principle affecting the rights of the entire population.

Now, the principles enunciated in the Report are such as to invest the Governor with all powers of the State. In short, all the powers of the State are concentrated in one single person and, I submit that such concentration of power in one single person is dangerous to the State, however eminent he may be and by whatever democratic methods he may be elected. It is true that it is stated in the Note to Clause 9 that the Governor, in the proposed constitution, is to be elected by the people, so that he is not likely to abuse his discretionary powers. But it must be admitted that it is dangerous to invest one single person with all such powers, whatever may be the method by which he is to be elected.

Further, it is also stated in Clause 13 that generally the Governor will be guided by the conventions of responsible government; but there is no compelling necessity on his part to follow any such convention. And, if there is any difference of opinion as to whether he has followed the conventions or not, the Governor's act cannot be called in question. It is obvious that the relationship of the Ministers with the Governor and their dealings with him should not be left to the entire discretion of the Governor. I would point out that such a procedure is entirely foreign to all principles of democracy. If this is allowed to stand, then the Ministers will be only advisers and the Legislature will be only an

]* English translation of Hindustani speech ends.

advisory body. Therefore it is that we want that the Ministers should be responsible to the Provincial Legislature and that they should be elected by the Provincial Legislature concerned. There is otherwise every possibility of the Governor abusing his powers and encroaching upon the rights of the people in more ways than one. It is to ensure that proper democratic government may be carried on that we want that the Ministers should be responsible to the legislature and through the legislature to the electorate, and not to one single man. The principle is that the Ministers should be responsible ultimately to the electorate through the legislature and not to one single man by whatever method or majority he may be elected. I hope the House will accept this amendment as it is based on fundamental principles.

Sri M. Ananthasayanam Ayyangar (Madras: General): I am not moving my amendment, but I wish to speak.

Mr. President: The Honourable Member may speak later.

There is another amendment of Begum Aizaz Rasul to this amendment of Mr. Aziz Ahmad Khan. Will you please move it?

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I wish to move that at the end of the amendment moved by Mr. Aziz Ahmad Khan to Clause 12 the following words be added:

"and shall hold office during the life of the Assembly."

Sir, my purpose in moving this amendment is that the Ministry should be a strong and stable Ministry and that it should not be subject to the whims and fancies of the party or legislature to which it is responsible. Sir, in England and France the Ministry is responsible to the legislature. We see what happens in France every day. The Ministry is weak and the Cabinet has fallen several times. That always happens where there are more than two parties in the legislature, and therefore in India which is so young in democracy, where the sense of responsibility is neither ingrained nor so well developed, we should have a strong and stable Ministry which can initiate long-range policies and be uninfluenced daily by the repercussions in its party. We do not want a repetition of what is happening in France in our country. Sir, my experience of the last ten years after the introduction of the Government of India Act of 1935 has been that in the provinces where the Ministries are responsible to the legislature and are liable to fall on a vote of no-confidence by their party or the provincial legislature, they cannot put forward any long-range policies. As I said before, often they are influenced daily by party feelings and are therefore necessarily weak. I therefore feel that a Ministry that has been elected by the legislature should have a long life in which it can formulate its policies and not be influenced by party factions. We may have the American system under which the President nominates his executive, but our country may not be ready for that. But the Swiss system under which the Legislature elects the executive for a certain period during which it is irremovable is to my mind the best form of govern-

[Begum Aizaz Rasul]

ment for the provinces, because the Ministers who have once been elected by the legislature cannot be removed by a vote of no confidence in it by the legislature. I feel therefore that the Swiss system is the best *via media* that can be accepted by us in this country, keeping in view the political and other conditions that are prevailing here and will continue for a long time to come. The system of the single non-transferable vote is to my mind the best system that can be adopted for the appointment of the executive because in that all interests will be represented and no party in the legislature will have any occasion to feel that it is not represented, and therefore I strongly support the amendment that has been moved by Mr. Aziz Ahmed Khan.

I also wish to point out that the best thing for a Ministry is to have its life synchronous with the life-time of the Assembly so that it can be an irremovable executive.

My other point is that in the constitution we are framing we are giving such strong and wide powers to the Governor who will be an elected Governor, that there is no need for another head of the State, because the Governor is there and will be in a position to allot portfolios, to represent the State on ceremonial occasions and to preside at meetings and to co-ordinate the work of the Ministers. All these things will come under the duties of the Governor and the Ministers who will be responsible men elected by the legislature will be able to initiate their policies and work out their long-range policies not at the whim of the party but from their own strong position. My experience is that where the Ministers are the representatives of a party, it is impossible for them to carry on the day to day work and the administrative work of the province uninfluenced by their party members. This necessarily means that the Ministry is weak and the administration suffers on this account because it is natural that Ministers who have to keep their party men pleased, have to do many things which are not good from the administrative point of view. Therefore I hope that this amendment of mine which is moved with a view to having a strong and stable government in the provinces will be accepted.

(Mr. B. M. Gupte did not move his amendment.)

Mr. President: I think these are all the amendments. Now, the clause and the amendments are open to discussion.

Seth Govind Das (C. P. and Berar: General): *[Mr. President, I oppose Mr. Aziz Ahmed's amendment and also the two amendments to his amendment. He has cited the example of America where Ministers are elected and has suggested to us to adopt, not the British, but the American democratic system. I would like to point out that the Ministers in America are not responsible to the legislature. If we look at the constitutions of

*[English translation of Hindustani speech begins.

those countries where a system of responsible government is prevalent we shall find that the Prime Minister is chosen there by the majority party of the legislature and he chooses his colleagues. The Governor approves the list of the personnel of the Cabinet submitted to him by the Prime Minister.

The conditions in the countries, where the system of responsible government exists, clearly indicate that responsible government cannot function unless there is joint responsibility. And there cannot be joint responsibility until and unless the Premier chooses his colleagues. Mr. Aziz Ahmed has stated that it is the English system of government which is responsible for all the strife in this country. I venture to tell him that a system which has not yet been put in operation here cannot be held responsible for the conditions prevailing in our country. This system of government can be adopted only in independent countries and so long our country is not free it is wrong to say that the said system is at the root of these troubles. If anybody is responsible for what is happening in the country it is the Muslim League that advocates the two-nation theory, that from time to time raises the cries of 'Islam in danger' and proclaims that there are two civilizations and two cultures in the country. It is wrong to say that the system of responsible government which we intend to establish here is responsible for these serious disturbances in our country. And then Mr. Aziz Ahmed should look to the system adopted so far by the Muslim League. The President of the Muslim League is elected—Qaid-i-Azam is elected. But the personnel of the League Working Committee is chosen by the President. The general body of the League does not elect the working Committee. The Congress too follows the same system: We elect our Rashtrapati (Congress President). The provincial congress committees elect their presidents. We authorise the Rashtrapati and the presidents of the provincial congress committees to choose the personnel of their working committees. Having all these in view, I beg to advise that we must not follow the American system of government, if we desire to establish responsible government here. The Ministers in America are not responsible to the legislature—the House of Representatives or the Senate. We want responsible government. We want our Ministers to be responsible to our legislature. If we desire to have this system, it is essential that Ministers should not be elected on the principle of proportional representation by single transferable vote.

The other two amendments to his amendment are amazing. One of them says that the Ministers so elected by single transferable votes should be responsible to their legislature. I do understand how the Ministers will be individually responsible to the legislature.

The other amendment put forward by one of our sisters is that the Ministers should hold office during the life time of the Assembly. I fail to understand how the Ministry can hold office during the life time of the Assembly when the majority of the

[Seth Govind Das]
members of the legislature have no confidence in them or the Premier. The amendment and the amendments to it are contradictory.

Therefore, concluding my speech I would again say that the system of government prevalent in Britain must be followed here if we have to establish responsible government on the eve of our getting independence.]*

Mr. President: A request has been made to me by a Madras Member that all the speeches which are delivered here in Hindustani should be translated into English for his benefit, because he is the mover of one of the amendments. I am afraid it is not possible to comply with that request because, in the first place, we have got no arrangement for an interpreter who would be able to translate all these speeches which are delivered in Hindustani, and I also know that there are certain members who do not know English and they would insist upon English speeches being rendered into their language, whatever that language may be. I think we had better take the limitation of individual members as the limitation exists and proceed with the debate as it has been going on, in the language in which the speaker wishes to speak.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I feel very much like a Madrassi. Much of what has been said by my predecessor on the other side and the immediate predecessor in this side has been lost on me. I fully agree with them that, as far as possible, the speakers should speak in the language understood best by the majority of the members of this Assembly; but, if it were left to me to speak in a language in which I could express myself best, I do not think there is any one at all here who would understand me. I would definitely prefer to speak in my own language *i.e.* in an Adibasi language. There is no member here at all who would understand me. Mr. President, you, coming from the same province as I do, would find it difficult to discover an interpreter. I do hope that in deference to the need very strongly felt and in the light of what has been said on the floor of the House, it will be appreciated that it is better to talk in a language which the majority of us could understand.

I come here to oppose the amendment. But before I oppose the amendment, I would like to say a word about a note, despite the advice given by the Honourable Sardar Vallabhbhai Patel that we are not to talk on any of the notes,—I know that you will permit me to say that it is most unfortunate that a paragraph such as this should ever appear on a serious document.

I will read it:

"It is to be noted that the Governor, under the proposed constitution, is to be elected by the people, so that he is not likely to abuse his 'discretionary' powers."

My elementary logic fails to understand the argument of this. That a man who is elected on a popular vote will not abuse his discretionary powers is beyond my comprehension. I shall now proceed

]* English translation of Hindustani Speech ends.

to the arguments that have been advanced by the proposer and the seconder of the amendment. It is unfortunate that the serial arrangement of these clauses are as they are. I think the proposer and his charming supporter would have thought otherwise had Clause 14 come in the place of Clause 2. In Clause 14 you will see that the Schedule which is to be equivalent of the Instrument of Instructions is provided for. I think a great deal of the apprehension would be completely removed were we to know what the Schedule or the Instrument of Instructions would be.

Hitherto we have been talking about responsible Government. What is responsible government but that the head of the executive of the province would be bound by the technique and methods of responsible government? There will be no question whatever of his being arbitrary. Admittedly, as far as the language of the clauses that we have so far considered goes, it looks as though arbitrary powers were going to be vested in the Chief executive of the province. Surely, Mr. President, that is not to be the case, if we consider that there is such a thing as the Instrument of Instructions, the Schedule as we prefer to call it now, by which he is bound. That being the case, the fears that have been expressed by my friends who have spoken from the other side would be remote.

Sir, I myself have been wondering what our constitutional experts have been up to. I have been, as a layman, trying to understand whether they were drafting, even for this intermediate stage, a constitution which was to be democratic. Up to date, I have not been convinced.—at least the language has been such that I have not felt that somehow or other the technique of this democracy was going to be democratic. But as far as this particular clause is concerned, I have no doubt whatever in my mind that the Governor must act in a responsible way.

Mr. Mahomed Sheriff (Mysore State): (Began to speak in Hindustani).

B. Pocker Sahib Bahadur (Madras: Muslim): On a point of order, Mr. President, may I request you to ask the speaker who knows English to speak in English, Sir?

Mr. Mahomed Sheriff: You have already given the ruling, Sir.

Mr. President: I am afraid I cannot force any speaker to speak in a particular language. It is left to him to choose the language in which he wishes to speak.

B. Pocker Sahib Bahadur: In that case, may I appeal to the Honourable speaker to speak in English with which he is very familiar, I know?

Mr. Mahomed Sheriff: I would prefer to talk in Urdu. *[Mr. President, I fully support the amendments moved by Maulvi Aziz Ahmad Saheb, Ibrahim Saheb and Begum Aizaz Rasul Saheba. The purpose of these amendments is to limit the powers of the Governors and to give the Legislative Assembly a preference in the

*[*English translation of Hindustani speech begins.*

[Mr. Mahomed Sheriff]
selection of the Ministers. The main purpose of these amendments is to introduce democratic principles in administration. Almost every day we repeat our allegiance to the democratic principles by proclaiming that in all things we should always try to popularize them. In the light of this, it seems necessary to see that the Governor's powers are limited. You might be knowing what is the system prevalent in Switzerland and other progressive countries. I beg to submit that probably in the opinion of Sardar Patel Saheb there is no harm in giving full powers to the Governors who are elected by the people. I would submit that a Governor, however, powerful he may be, must be in a position to carry out the wishes of the people. The principles to which the movers of the amendments have referred, are really the best principles and in the name of these democratic principles, I appeal to you all to become ardent supporters of democracy and standard-bearers of its principles. I strongly support these amendments and appeal to you to support them.]*

Mr. N. V. Gadgil (Bombay : General) : Mr. President, I want to oppose this amendment. I have heard that this amendment is calculated to secure a better prospect for democracy. As I understand, democracy is not an end in itself. It is a method, a mechanism to secure certain desired and desirable results.

Now, what are the objectives for which we are framing this constitution? These objectives have been defined in the resolution that has been passed. Apart from that, I take it that there will be several parties in the country and each party will be defining its own aims and objectives. These aims and objectives will constitute the programme of that party. Obviously, these aims and objectives are not embodied in the programme for the mere sake of telling the public that these are our aims and objects. The idea is to implement them when the party gets into power. If the party gets into power, that party cannot execute it, cannot implement it, unless that party is charged with the full executive responsibility of the Government.

Apart from this, I submit to this House that so far as the political trends in this country are concerned, we have been brought up in an atmosphere which has been most conductive to the establishment of what we are generally accustomed to term as Parliamentary Responsible Government. That Government can only function in certain given conditions. One of the conditions is that there must be at least two big parties and the Leader of the House must have the confidence of that party which is in the majority in the House. In other words, the Leader is really the man who counts and if you do not give him any chance to choose his colleagues, if you do not throw on his shoulders the responsibility of implementing the programme on which the electorate has returned that party, I think it is destructive not only of democracy, but of the few chances of any progress. Any coalition

]* English translation of Hindustani speech ends.

is not calculated to help progress in the country; much more so is the case if we accept the amendment. A coalition follows some understanding, some agreement, whereas under the amendment, strange and even mutually exclusive elements may be brought into the executive.

Apart from that, just consider what will be the effect if Ministers are chosen by the process of single transferable or non-transferable vote. What is there to guide the Governor for the purpose of allocation of portfolios? On the one hand, we are all anxious to see that he must be merely a constitutional head. On the other hand, if you accept this amendment, you will be giving him unlimited powers which he can use, not for the benefit of democracy but for the benefit of his own autocratic rule. Suppose out of nine people who constitute the executive, the majority party may get four, another party may get two, a third party may get one and two other groups may get one each. If the Governor is so powerful, he can certainly allocate the most important port-folios to those who belong to the minority groups. Is that position calculated to the better progress of this country? Is it calculated to further the programme on which the majority party has been returned? I think, if you accept this amendment, you will be doing the greatest injustice to the electorate, to the party that has put its programme before the electorate and on which it has been returned. The electorate is justified in expecting that that programme will be implemented and if you make that implementation impossible by accepting such an amendment, I think you will not be doing justice to the electorate. In other words, I wish respectfully to submit that it is dangerous from every point of view. It is unfair to the electorate. It is unworkable. It is giving too much power to the Governor. There is nothing in this amendment to which I can bring myself to reconcile.

One of the supporters of the amendment said that it will secure a strong and stable government. So far as the strong government is concerned, I think it cannot be secured. That it will be a weak government there is no doubt. In the absence of collective responsibility there will neither be continuity nor consistency in administration. If you accept the amendment that they will hold the office till the life of the Assembly, it may be stable but it will not be progressive. The very idea of a democratic government and a responsible government is that if the elected members even during the statutory period do something, act in a manner which is calculated to forfeit the confidence of the country, there is some provision in the constitution whereby dissolution is possible but that also is considerably affected. I therefore submit that the House will be perfectly justified in throwing out this amendment.

Kazi Syed Karimuddin (Berar: Muslim): *[Mr. President, I support the amendments moved by Mr. Aziz Ahmad and Begum Aizaz Rasool For the last three days I am seeing that whenever a Leaguer makes a speech, in

*[English translation of Hindustani speech begins.

[Kazi Syed Karimuddin]

reply he is told that till the other day he was raising the slogan of religion in danger and so we (the Leaguers) can never support socialism and democracy. Mr. Kamath has even said that socialism need not be taught to Gandhiji and Pandit Jawaharlal Nehru. I say to Mr. Kamath that since long he has been trying to teach it to them but probably they understand it too well. Notwithstanding all this, Mr. Kamath needs to be told what an Urdu poet has said:

"Dead drunk during the night and penitent in the morning; I continued to be a drunkard. Yet did not lose Heaven."

Mr. Kamath can play a hero but not by maligning the Muslim League. Besides this there is one other noteworthy fact, and it is this: whenever a proposal is put forth from the Congress side, you are always disposed to accept it but whenever any thing comes from the Muslim Leaguers, howsoever beneficial it might be, it is discarded on the pretext that nothing emanating from Pakistanwallahs can be accepted. This Constituent Assembly is no political platform; it is a constitutional body. Here, the Muslim League can put forth its point of view and every member has the right to do so. The amendment before us is "that the Ministers may be elected by the House". The British are quitting India, but their shadow is not leaving us. You say that British rule and the British executive is based on democracy. This is quite wrong. You should look to the Constitution of U.S.A. and Switzerland. Since 1921 and particularly after the Act of 1935, what I have seen is that the majority party always shows scant regard for the opposition. I maintain that the result of majority rule has been that the Ministry tends to be prejudiced against the opposition parties —be it communist party or any other. For keeping the Ministry in the saddle, the majority party needs cajoling. I say majority rule is accompanied by nepotism and favouritism. With these evils eradicated it is difficult to keep the party supporters intact. Hence to say that majority rule is based on democracy is quite wrong.

Mr. Aziz Ahmad's amendment is to the effect that the Ministers should be elected. What we want in India is a constitution of the type by which she may be classed as one of the Progressive States of the world. India is passing through a very delicate phase when our mutual differences need to be settled. Mutual conflict should be stopped, and there is only one way of doing it. It is this: the representatives of every party in the House should be included in the Ministry.

The majority party will get greater representation, while the minorities will get less number of seats. Under these circumstances, as Begum Sahiba has observed, the House should last as long as the Ministry continues in office. There is nothing new in it. This has been made plain in the constitution of U.S.A. By doing this, executive

judiciary and legislature would be divided into three parts. Legislature would lay down the policy. The function of the judiciary would be to check the executive from exceedings its limits, and the duty of the executive is to carry out the policies laid down by the legislature.

What we find today is that there are different religions, various parties and numerous classes of people in the country. The best method is that each and every party should be represented in the government. That would ensure the stability of the government and mutual conflict would also be eliminated. Therefore I support the amendment which has just now been moved and hope that the House will accept it.]*

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. President, Sir, I have very great pleasure in supporting the amendments moved by my friend Mr. Aziz Ahmad Khan Saheb and the further amendment by Begum Aizaz Rasul. In doing so, it will not be out of place if I observe that the constitution, the draft of it, the report of it which is placed before us, except for a few questions such as the election of the Governor and the term of office of the Advocate General, looks as if it has been copied from the 1935 Constitution in regard to the Provincial Autonomy. Sir, if we want our constitution to be democratic, we should see that the legislature, the Cabinet and the Executive, reflect the several sections of the people.

If we are relying upon what is called the parliamentary system of democracy, it is the considered opinion of the pandits of constitutions that that is not a democratic system of government. The model that ought to be before us is the model of the Swiss Government. A system of government can be called democratic only when all the sections of the people are represented in the legislature. We are now suffering from a handicap, because we do not really know what would be the method of election, what would be the constituencies and so on and so forth. Anyhow, I take it the constituencies will be territorial constituencies, and that at the same time some reservations will be made in regard to communities or interests which will enable them to return their men to the legislature. Now, Sir, if that is the method you are going to employ, and that is necessary in the peculiar circumstances of the provinces in India, then people from all sections of the province and persons of different interests will be elected to the legislature. If you are accepting that method of representation of people to the legislature, with reservations of seats by whatever method, by weightage or by some other way—it does not matter at all by which method it is done, it does not arise now—then it necessarily follows that in the Cabinet also the minorities or different sections should find a place. That is what is obtaining in the Swiss Government, and that is the reason why it is said that the Swiss Constitution is the most democratic, because it represents all sections and all parts of the country in its Legislature, and not only in its Legislature, but also in its Cabinet. The method followed in Switzerland is this. The Legislature elects its

]* English translation of Hindustani speech ends.

[**Mahboob Ali Baig Sahib Bahadur**]

Ministers by a certain method which ensures that all the minorities are represented. The method is called proportional representation by non-transferable vote That is what we want here also in order that the constitution may be democratic, and provisions should be made for the return of certain interests and minorities. Then it necessarily must follow that these people must find a place in the Cabinet also.

The amendment of Begum Sahiba is a consequential one to the resolution moved by Maulvi Sahib. We are not asking for any nomination to the Cabinet. We are only asking for election by a certain method which will enable minorities and interests to be returned to the Cabinet. This method of election by proportional representation is considered to be the best. When the Legislature consists of say 50 to 500 or 300 members this would not be a cumbersome method. By adopting this method you will be following up the principle that you have enunciated, that minorities and certain sections of the people must be represented and the constitution must be a democratic one. To say that, when a Minister has been elected, that he can be removed on a vote of no confidence goes against that very principle. There is some conflict which has not been observed, between the amendment of my friend Mr. Ibrahim and the amendment of Begum Sahiba. Mr. Ibrahim says that the Ministers must be made responsible. If the amendment of Maulvi Sahib is accepted, then it means the Minister can be removed. But it is very necessary, Sir, that those Ministers who are elected by the Legislature and who are elected in order that the Cabinet may reflect the various sections, Christians, Muslims, or whoever they are, different interests, the tribal areas and so forth, all these sections, then they must continue for the term of the Legislature. That is consequential.

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I expected, Sir, that there would be some innovations in the constitution that is going to govern us in the future. But I find that except for the provision that the Governor shall be elected, there is nothing new. I appeal to the House through you, Sir, that in order to lay the foundation of that confidence which you intend to create in the minds of all sections of the people, Muslims, Hindus, Tribals etc., this democratic method of framing the constitution should be given full consideration by this House.

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Shri S. Nagappa (Madras: General): Mr. President, Sir, I support the original clause moved by the Honourable President of the Committee, that the Governor's Ministers shall be chosen and summoned by him and shall hold office during his pleasure. While doing so, I have very few remarks to make. Clause 14 lays down that in the appointment of his Ministers and his relations with them, the Governor shall be generally guided by the convention of responsible Government as set out in Schedule so and so. In the latter part of this Clause 14, it is said that the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in

accordance with these conventions. Now, Sir, especially for minorities instead of keeping power in the hands of the Governor to choose his Ministers it would have been better if it had been kept in the hands of the Legislature. For instance the Governor or the Premier may select Ministers of his own choice, men who will implicitly obey the Premier or the Governor. But such people will not command the confidence of the particular section of the people whom they are expected to represent. Therefore if it had been something like the Swiss model, leaving the Executive to be formed by the Legislature, then every group and every member of the Legislature will have a chance to select their own representatives. Such representatives will be true and effective representatives. But there comes the trouble. If the Cabinet is formed in this manner, then in the Cabinet there will be divergent elements, one pulling on one side and another pulling on a different side and so there will not be homogeneity in the Cabinet. I do see the point. In order to avoid that situation the Cabinet must be made to select its Premier, because then the Ministers of the Cabinet cannot but follow the Premier.

Now, Sir, no doubt in the draft constitution it is said that the Governor will choose his Ministers but it has not been said that the Governor must choose his Executive or the Ministers in consultation with the leader of the majority party. For instance, under the 1935 Act you are aware what the Governor of Sind did. He did not call the party which had a slight majority. There were two parties practically equal but the Governor took his own choice. He selected whom he thought fit. He did not call the really representative and majority party. Therefore such powers vested in the hands of the Governor are sometimes dangerous. No doubt these Governors are elected by adult suffrage and yet that is exactly the reason why a Governor should not be vested with this power. As he is elected by adult suffrage he might belong to a majority party. It is not human nature to be above party politics. He may be a Governor, but yet he is a human being. He knows that he has been elected by the people and he knows which party supported him in the elections and which did not. Therefore there is ample scope for the Governor to abuse or misuse his powers. So by this means you will be not only taking out some of his powers in forming the Cabinet but at the same time you will be going a long way to placate the minorities. They will have their say and they will have their true and effective representation by means of the single transferable vote. Otherwise, if it is left to the choice of the Governor, if there are two equal parties or if there is a slight difference, instead of calling for the party which is slightly in the majority, the Governor may call, as the Governor of Sind did, the other party to form the Cabinet. If such Cabinets are formed where is the guarantee that they will be steady and strong governments? Day after day the Government will be interested only in safeguarding their position and will not be in a position to lay down policies nor be able to see that the people of the country are benefited by them. In my opinion, I think

[Shri S. Nagappa]

the powers vested in the Governor are so large that it gives cause to suspect. I do not say that the Governor who has been elected under adult franchise will misuse his powers. People will not go to the extent of selecting such people but we should remember that after all a Governor is a human being and has also his own likes and dislikes. So there is scope for him to err and that is what I want to point out.

The other point is, as I said in the beginning, it would have been better that instead of allowing the Cabinet to be formed by the Governor the Legislature forms the Cabinet. Then every member in the Legislature will have the right to elect his own representative. The question in that case will be whether such a constitution will work. All sorts of elements will be there in the Cabinet and the question is whether there will be individual or collective responsibility. No doubt in every Cabinet or team work they are expected to have joint responsibility. If the members of the Cabinet selected their own Premier, to that extent at least they will be responsible and will be having joint responsibility.

Hitherto the Governor used to act in selecting members of the minority communities according to the Instrument of Instructions. Under Clause 14 there is a note which says that this schedule will take the place of the Instrument of Instructions now issued to Governors. I am glad that that provision is there and I hope that this clause under this schedule will give some scope but it would have been better if it had been otherwise.

Dr. B. Pattabhi Sitaramayya (Madras: General): Mr. President, a sudden impulse has overtaken me as I have been following the debate with great interest and I am particularly glad that our revered old friend from U. P., Mr. Aziz Ahmed Khan has inaugurated this discussion. He has given us an opportunity for a full-dress debate upon the question of responsible government *versus* fixed executive and the simple lacuna that he left in his amendment has been filled up by our extremely learned lady Begum Aizaz Rasul Saheba. I am therefore tempted to take part in this discussion, not upon the lower plane upon which it has been inaugurated but I want to take the whole discussion up, if I may mention it boastfully, to a higher plane.

We all judge on facts and conditions as they have existed during the last few years how that Provincial Autonomy which had been introduced by the Act of 1935 has been working. Unfortunately or fortunately the historical conditions of the present day are an inheritance of the past 30 or 40 years. We have inherited certain conditions and we have been the victims of those conditions. We have not been able to escape from the tyranny of those conditions; we have not been able to write upon a *tabula rasa* or to begin afresh with a clean slate or with clean hearts. We have inherited these things which have been the creation of the Br[illegible] Government. You are fully aware how in

1906 during Lord Minto's time His Highness the Aga Khan had led a deputation and negotiated for separate electorates. The vicious seed grew big and bore fruit in 1916 in the form of the League-Congress concordat which was more or less incorporated in the Montagu Reforms. We were hoping that with the lapse of a decade these vicious separate electorates would come to an end, but we have not succeeded. Everytime we had an opportunity of revising the political system the tree took its roots deeper and deeper and bore worse and worse fruit; at last we have reaped the final fruit, the final stage in which India functions as a corporate body and Pakistan is destined to function, let us hope only for the present, as a separate Sthan.

Under the circumstances it is for us to think afresh to bring a new outlook upon the whole problem and see whether these separate electorates should continue. What purpose do separate electorates serve now? The whole political question has to be taken together as a comprehensive problem for fresh consideration. How are they going to serve the purpose of the 7 per cent. of people in Madras, the 9 per cent. in Bombay, the 4½ per cent. in C.P. and the 14 per cent. in the U. P.? They will only provide ground for perpetual complaint. We are therefore looking to joint electorates. Let us forget all the antagonisms created—and inevitably created, and created for no fault of ours—in the past. Let us forget the very words—the two names, Congress and League. Let us have a Congress-League organisation. Or let us drop both these names and have a democratic, republican or socialistic organisation—any appellation that you can adopt—based entirely on political grounds. It will eschew all religious predelictions.

Indeed the "minorities" have always addressed themselves abroad to the three questions of freedom of religious worship, faith and customs and preservation of language script and culture. It is in this unfortunate land through the intervention of the British Government that the minority question has been complicated by mixing it with political matters. But now that period is over. We are entering upon a new period in the development of our country. Therefore, when new joint electorates are formed and when you and I have the same political programme and the bone of contention is "agricultural income" *vs.* "limitation of land", that is to say economic questions hold the field, then we shall have common ground to tread upon. Then I can go to Janab Mahboob Ali Beg's house and address his mother and he may come to my house and address my wife, we can invite each other to dinner, we can exchange the best of cordialities in life and become brothers once again. Then there will be no question of the Congress people alone exclusively monopolising the seats in the Government. There will be Christians, Muslims and Parsees in our Government. Anybody worthy of being selected will be selected by virtue of his service to the country—not only by virtue of his jail-going; this will be forgotten very soon; it is almost being forgotten

[Dr. B. Pattabhi Sitaramayya]

Indeed the old traditions are best forgotten and new traditions had better be created. Let us not judge the future by the past. Let us draw a veil upon the past, and begin the future a new. Let us be able to form political organisations on a new basis so that it will not be said that the Muslims as a minority have been neglected and ignored. No such thing will happen in the future. The complaints that have been advanced from this rostrum have been absolutely unassailable. It is a pity that people should be compelled to speak in such tones. But that is a consequence of the inevitable past for which we were not wholly responsible though it must be admitted we were partly responsible. We have all come together again under one banner and on one platform. We shall pursue one programme and there will be no difficulty whatever hereafter.

Chaudhri Khaliquzzaman (U. P.: Muslim): On what point is the Honourable Member speaking, may I know? I do not think the amendment refers to any matter about which he is speaking.

Dr. B. Pattabhi Sitaramayya: I am much obliged to my friend for having pointed out this little matter. The relevancy of the question is that the whole amendment is based upon the complaint that the Muslims form a small minority—it refers to all other minorities—and that therefore one section, being in a vast majority by sweeping the polls, will on the principle of responsible government sweep the Ministries and that the minorities will suffer. I say that no such thing will be allowed to come into existence when the parties are formed on political principles and a new alignment has taken place.

Kazi Syed Karimuddin: But none of the speakers supporting the amendment has referred to the suffering of the minorities whereas my friend is referring to it.

Shri Balkrishna Sharma (United Provinces): He has seen through your game.

Dr. B. Pattabhi Sitaramayya: We shall have new conditions to deal with and we shall not be influenced by our unfortunate experiences in the past. I would therefore suggest that this question should be looked at altogether from a new angle of vision. It will then be possible for us to see how we can form political parties on purely political principles without any communal bias and see how we shall be able to work out a new formula which is really based upon responsible government. This proposal which has been made is based on the bad experience of the past. That experience is a forgotten dream and we shall inaugurate a new chapter in our political development which will visualize conditions of an altogether different character. I therefore urge, Sir, that this amendment may be thrown out.

[Shri D. Govinda Doss (Madras : General) then spoke in Telugu.]

B. Pocker Sahib Bahadur: Mr. President, in what language is the Honourable Member speaking?

Mr. Ram Narayan Singh (Bihar : General) : I rise to a point of order. I want to know whether the Honourable the President understands the language in which Mr. Govinda Doss is speaking and if not, how he controls the speaker.

Mr. President: I do not think it is necessary for me to control the speaker. I think he is speaking within bounds. (*Laughter.*)

An Honourable Member: I want to know from you, Sir, whether the Honourable Member is supporting or opposing the motion. I do not understand him and I do not think any Honourable Member knows or understands whether he is in favour or against the motion before the House.

Mr. President: The speaker suffers from one kind of limitation and other members suffer from some other kind of limitation. The speaker is ignorant of some languages and others are ignorant of his language. All suffer. I will allow him to speak under the rules in the language in which he is speaking. I take it he is unable to express himself in English and so wishes to speak in his own language.

(Shri D. Govinda Doss finished his speech in Telugu, thanking the President for upholding his right.)

Chaudhri Khaliquzzaman: Mr. President, Sir, the amendment which has been proposed by Mr. Aziz Ahmed Khan consists, to my mind, of two parts. One refers to the election of Ministers and the other, to the method of election of those Ministers. Unfortunately, it appears to me that some of my friends here have overlooked the principle altogether and have applied their minds only to the other portion of the amendment which refers to the method of election of Ministers. I can assure Members here that, so far as the question of minority rights are concerned, we know that there is a Minorities Committee and that we shall have the opportunity of discussing our rights there. Having seen and gone through the Report of the Provincial Constitution Committee, we came to the conclusion that every possible effort was made by the Minorities Committee submitted to see that nothing was said in the Report which may be repugnant or inconsistent with the recommendations of that Minority Committee. We are to that extent grateful to the Members of the Provincial Constitution Committee whose Report is under consideration. And I would beg of you all to discard from your mind the feeling that there is any hidden motive behind this amendment. It may be that once the principle of election of the Ministers is agreed upon, whether it should be by non-transferable or single transferable vote or otherwise it will

[Chaudhri Khaliquzzaman]

present no difficulty. But here is a question of principle. We feel that having given very wide powers to the Governor, we must have an irremovable Ministry. I shall, for that proposition, not refer to the American Constitution or the Swiss or any other Constitution. To my mind the question must be looked at purely from the point of view of the genius of the people, from the point of view of what will suit the genius of the people better.

Now, we have not for long enough worked the Constitution of 1935 which really gave us some power in the provinces. When for the first time the Congress assumed power, it worked there only for two and a half years, and this time it has only just taken over power. We have some experience in other fields of activities. For instance in the local bodies, the method of election has been tried in a different form. What has been happening to the municipal and district boards? Everyday there is a vote of no-confidence against the chairman of district boards and municipalities. One does not know what to do with the powers given to them. The Governors of the provinces are themselves tired of it all. Therefore they want to go back on that system. First two-thirds majority has been introduced, and I do not know whether the legislatures within provinces may not have to introduce three-fourths majority. Otherwise the spectacle of the chairmen of the municipalities and presidents of local boards going out everyday will be witnessed. Within these few days one Ministry in Madras has fallen. This experience of ours leads us to conclude that it would be in our interests to have an irremovable executive. Otherwise, with the change of slogans there may be change of Ministry. Our people are apt to be taken in by slogans. You say that the cry of Pakistan, Two-nation theory and all that was caught by the masses. This shows that your people are apt to follow any lead and any slogan. For this reason I say you should make provision to protect your Ministers. You should protect them against these shifting parties and predelictions of the groups in the legislatures. This is a pure and simple proposition which we have placed before you for your consideration. To think that it is merely a case of single transferable or non-transferable vote which stinks in the nostrils of some of my friends is not right. I can assure you that if you accept the principle, we shall accept any alternative method of election. Therefore do not make that method of election the test for the acceptance or non-acceptance of this amendment. It may be that you are dissatisfied with this amendment. You may reject it. But, to say that this amendment has been moved because we want to get over some particular mode of election or representation is to misjudge it. I can assure you that, personally, I believe that no Governor who has been chosen by the vote of the people will ever have a Ministry without representatives of the people, whoever they may be, Muslims or non-Muslims. I believe it. Therefore it is not from that point of view that we have asked for the consideration of this amendment.

With these few words I support the amendment moved by Mr. Aziz Ahmed Khan.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, I have only a few words to say with regard to the views expressed by my friend, Mr. Khaliquzzaman. Mr. Aziz Ahmad Khan's amendment, as the House has seen, wants the ministry to be elected by proportional representation. The two amendments that have been moved are mutually contradictory. Mr. Ahmed Ibrahim Sahib says that the minority shall be responsible to the provincial legislature. That means that the ministry elected on the basis of proportional representation would be responsible to the legislature, which, in other words, means that after a vote of censure the ministry should resign. On the other hand, the amendment moved by Begum Aizaz Rasul wants that the ministry chosen by proportional representation should continue during the life of the Assembly. The intention of the second amendment is that the ministry should be elected by proportional representation and should continue till the end of the life of the Assembly. Now I want the House, Sir, to envisage the implications of this scheme. The system of proportional representation, as everyone knows, is this that instead of having the support of the majority in the House, you must get the first vote of a small group, and nothing fragments the political life of a country as proportional representation in the selection of ministries. I will give a concrete instance. If there is a House of 300 members, the majority party of, say, 151 must support all the ministers in order that they may retain office, but under P. R. if there are seven ministers and you have got a voting strength of 300, anyone who gets the first votes of 35 or 40 members will be entitled to become a minister. Therefore the House will not look at the ministry as a consolidated body of representatives elected on the general principles and policies which the ministry has to carry out, but it will be fragmented into sections, each trying to get as many first votes as possible. I am not saying this as a matter of theory. After the Treaty of Verseilles at the end of World War I, on account of President Wilson's partiality for proportional representation, several of the Central European countries introduced proportional representation and lived to be sorry for it. Instead of putting the national good before them, the ministers were more busy securing the first votes of a small group by raising a very narrow isolated cry. Therefore, the net result of proportional representation will be that the ministry instead of being broadbased on general principles, all ministers standing together and having collective responsibility and interested in doing good to the province as a whole, it will consist of representatives of different groups having different ideologies and different policies. This will invariably result—the 35 votes will fluctuate—in a coalition with practically differing policies, and when a coalition comes, we know the result. Perhaps, members know what happened and what is happening in France during the last 25 years. In France, it has been more or less the fashion to have coalition ministries and the result has been

[Mr. K. M. Munshi]

that ministries have been falling like castles of cards. During the last eight or ten years there have been more than twenty-two ministries. Some ministries have lasted only for eight or nine days. At the time when Hitler entered Austria, there was no ministry in France. When he entered the Rhineland, there was a care-taker ministry in France, and nobody would become the Prime Minister. This is the situation where you get coalition ministries. This is the greatest danger to which democracy is prone,—this danger of coalition ministries. There is only one way in which democracy can be practised effectively and that is by having a majority party. If we have majority party, we must have one, and that can only be done firstly by having the group of ministers selected by the majority party, secondly by collective responsibility and lastly by the control which the Prime Minister exercises over that homogenous ministry. As the House knows very well, Sir, in England the power of the Prime Minister is absolute and that is what has made the British Government so very strong. It is the Prime Minister who decides as to who should be a minister, and can dismiss a minister, and can control his party by saying, "I will get the House dissolved and go to the country unless the party supports me". The mechanism of responsible government which we have therefore been following to a large extent in this country is the British model, and a departure of this kind will weaken the ministry to a large extent and the provincial legislature will be nothing else but a fragmented house which cannot devote itself to the good of the province. Therefore, though the system of proportional representation looks so innocent that some people have got a fascination for it, it has led to the unmaking of democratic institutions in more than one country in the world. This amendment of Mr. Aziz Ahmed Khan is really speaking destructive of democracy. If you have a democratic system, then you must carry it out to this extent that if the House passes a vote of censure against the ministry, the ministry must be prepared to resign. If it continues, the ministry will be naturally unresponsive to the fluctuations of public opinion.

There is only one argument which my friend, Mr. Khaliquzzaman placed before the House to which I would like to refer. He says, "Large powers are going to be given to the Governor. If so, give the ministers much larger powers". There is no doubt that under Clause 9 which the House has adopted, certain discretionary powers have been given to the Governor. What the House has not yet before it, is the full extent and scope of these discretionary powers. It must be realised that in democracies which are young, which are yet to gain experience, times of grave menace to public tranquillity would require a steadying factor, a strong steadying factor, and the discretionary powers that are sought to be given to the Governor are only in times of grave menace to public tranquillity. If democratic institutions run their normal course, if public tranquillity is not disturbed in a very serious manner, then there is no difficulty at all; the ministry will function. The Governor will step in only when there is a grave menace to public tranquillity. Then everything must be subordinated to the supreme need

of public tranquillity in the province. At that stage the Governor who will have the added authority of being returned on the basis of adult franchise will step in and say "my first and last function is to restore peace and tranquillity". This country has suffered immensely by the failure of the supreme authority in certain provinces to exercise their power in moments when public tranquillity has not only been threatened, but has been destroyed. It is only for that contingency that the discretionary power is given. Till that event, which will be very rare—let us hope it will never occur at all—the ministry will function as a responsible ministry and there is no reason why these amendments should be accepted by the House.

Shri Phool Singh (United Provinces: General): *[Mr. President, after the speech of Mr. Munshi, I have not much more to say against these amendments except that the elections should not be held by proportional representation. Such a ministry can never be dubbed as a Coalition Government, which is always based upon a compromise between different parties, but when the ministry is elected by its own men on the votes of its own party, it rests with the ministers whether they act jointly or not. The proposal of Maulvi Aziz Ahmad Sahib and the amendment of Begum Sahiba have filled in the gap, if any. That is, if ministers, so elected, take to quarrelling among themselves, and the actions of one are negatived by the other, then the legislature would not have even the power of removing such ministry. In other words, ministers may do good or evil but they would continue for the full term of the legislature. This is something beyond my comprehension. As I have said earlier, I do not wish to waste any more time of the House. Party government may be a progressive government. Coalition government may be suitable for any particular *objective*, but a government which is neither a party-government nor a coalition government cannot fulfil any object, rather it can succeed in defeating it. I do not hesitate to say that such a government can be of no use to any country. I dare say that the movers of these amendments have taken their "clue" from the present Interim Government.

If we do not want to entangle the provinces in the difficulties of which this Interim Government has been the victim, then it becomes the duty of each one of us to vehemently oppose these amendments. There is no time to be lost in such foolish experiments. We have had enough of sacrifices, and now it is only the party government which can be beneficial for this country. With these words I oppose both these amendments.]*

Mr. Shankar Dattatraya Deo (Bombay: General): I move closure.

Mr. President: I have the names of half a dozen of more members who have expressed their desire to speak.

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*[English translation of Hindustani speech begins.
*] English translation of Hindustani speech ends.

Many Honourable Members: Closure, closure.

Mr. President: But if the House wishes to close the discussion, I shall have no objection. There is a motion for closure. I cannot make an exception in favour of one member. There is a closure already moved. I put the motion for closure.

The motion was adopted.

The Honourable Sardar Vallabhbhai Patel: Sir, this innocent clause has covered a very wide and controversial field of debate and yet I think the appetite of some of the speakers has not been satisfied. I thought that this would be passed without any debate. The principal amendment which has been suggested would cut at the root of the whole structure of the constitution. We have adopted the British parliamentary model—cabinet system—in this model provincial constitution. The Mover of the amendment contemplates a different model which would, if passed, probably require us to reconsider the whole constitution. It has been suggested that during the last few years we have considerable experience of the present type of constitution. I do not know whether that is a correct statement of fact, because the constitution under which we were working was a complicated constitution in which the elective system, the services, the Governor's powers, the checks and counter-checks provided in the constitution were such that when the constitution was passed, it was suggested in the debate that it was humanly impossible to work that constitution and even the angels would fail. In spite of that they worked that constitution. The difficulties experienced in the working of that constitution and the bitter experience which some of us had to go through was not due to this particular system of selection of ministers or the prime minister being authorised to select his ministers but to various other causes which need not detain us. I have no intention of touching upon those questions. Somehow or other, some speakers have touched on that question, but I do not propose to enter into that controversy. Election by proportional representation of ministers is a system which is contrary to the whole framework of this constitution. It cuts at the very root of democracy and therefore does not fit in here. The experience which we would gain in the working of such a constitution would be much worse than the experience that we have gained in the working of the present constitution. Therefore, I suggest that it is a very dangerous innovation to introduce in this constitution and we should not have it here.

Then, the question of the electorate, separate or joint, and other questions are to be considered by a separate committee, as I have already explained in my introductory speech. Therefore, I do not propose to touch on those questions.

It has been suggested that the Governor has got very wide powers. I do not think that in this constitution, the Governor has got such wide powers as under the present constitution the foreign Governors

have got. The present constitution was such that we had not only no elected Governor, by adult franchise, representing the will of the people, but a foreign Governor with an Instrument of Instructions, designed to protect foreign interests. The experience derived from the working of that constitution cannot be compared with the constitution that we have proposed here. Whether in the working of this constitution that we propose we will have pleasant experience and smooth working or not, will depend much upon the manner in which we work the constitution. Constitutions are always broken by the people who have got a desire or a will to do so. We are not wanting in instances where if the constitution was worked in such a manner that a Prime Minister or a Minister was found irremovable by a vote of the House, he could be removed by the bullet. So, it is no use saying that an irremovable executive will be safe. If the irremovable executive functions in such a manner, then the people will find out other methods to do away with it. What we really want is real good will to work a good constitution and a spirit to work any constitution that you have got.

Here, we have contemplated collective responsibility, joint responsibility. Any election of Ministers by the method suggested by the Mover of the amendment would mean individual responsibilities and individual Ministers who would go their own way. Each Minister has only to work for five, seven or ten votes which he can probably obtain by means which may not be very desirable and the whole machinery would be liable to be corrupted. Therefore, I propose that the motion that I have moved should be adopted.

I do not wish to deal with the other amendments because they are contrary to the main amendment, as has been already explained by some of the speakers and therefore, the amendments should be rejected and the proposition that I have moved should be accepted.

Mr. President: It has been moved:

"That the Governor's Ministers shall be chosen and summoned by him and shall hold office during his pleasure."

To this an amendment has been moved, that for Clause 12 the following be substituted:

"The Governor's Ministers shall be elected by members of the Provincial Assembly by the system of proportional representation by single non-tranferable vote."

There are two amendments to this amendment. The first amendment is that at the end of the amendment to Clause 12 by Mr. Aziz Ahmed Khan (Item 57), the following words be added:

"and shall be responsible to the Provincial Legislature."

The second amendment is that at the end of the amendment moved by Mr. Aziz Ahmed Khan to Clause 12 (Item 57), the following be added:

"and shall hold office during the life of the Assembly".

The procedure which I propose to follow is, in the first instance to take vote on the amendments to the amendment. If any of these two amendments is accepted, that becomes the principal amendment. Then I shall put to vote the amended amendment and if it is accepted, it becomes part of the clause. Then, I shall put the clause as amended before the House.

[Mr. President]

I now put to vote the amendment to the amendment, namely, that the following words be added at the end of the amendment:

"and shall be responsible to the Provincial Legislature."

The amendment was negatived.

Mr. President: I now put to vote the second amendment to the amendment, namely, that the following words be added at the end of the amendment:

" and shall hold office during the life of the Assembly. "

The amendment was negatived.

Mr. President: I now put the original amendment of Mr. Aziz Ahmed Khan to vote.

The motion was negatived.

Mr. President: I now put the original clause to vote.

The motion was adopted.

Mr. President: We will now go to Clause 13.

CLAUSE 13

The Honourable Sardar Vallabhbhai Patel: I move Clause 13.

"13. (1) A Minister who for any period of six consecutive months is not a member of the provincial legislature shall at the expiration of that period cease to be a Minister.

(2) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the provincial legislature so determine, shall be determined by the Governor:

Provided that the salary of a Minister shall not be varied during his term of office."

This is a proposition which is hardly controversial and I do not think there will be any debate on it. I move this proposition for the acceptance of the House.

Mr. President: There are several amendments of which I have received notice. I will call on the Movers to move their amendments.

(Messrs. R. K. Sidhwa, V. C. Kesava Rao and H. V. Pataskar did not move their Amendments Nos. 59, 60 and 61.)

Mr. R. K. Sidhwa (C. P. and Berar: General): My amendment No. 62 states that the salary of the Ministers shall not be more than the Governor's Salary or even the same as the salary of the Governor. It is very appropriate that we passed yesterday that the Governor should be elected on adult franchise and also that he should be given some powers. Therefore, he will be the first citizen of the province and his dignity should certainly be considered to have increased. Therefore, it is desirable that the Ministers' salary should be less than the salary of the Governor. I am told that this is a very healthy amendment, but it would not be proper to put it in the constitution. Therefore, Sir, I do not move it.

(Mr. Biswanath Das' amendment was not moved.)

Mr. President: These are all the amendments of which I have received notice. The original proposition is now open for discussion. Those who wish to say anything on it will do so now. (*After a pause*).

No one wishes to say anything. I now put it to vote.

Clause 13 was adopted.

Mr. President: We go to Clause 14.

CLAUSE 14

The Honourable Sardar Vallabhbhai Patel: Sir, I move that:

"In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in Schedule. . . . . ; but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions."

Now a Schedule according to the traditions of responsible Government will be framed and put in. This also is a non-controversial thing and I move the proposition for the acceptance of the House.

Mr. President: I have received no notice of amendment to this clause. I shall put it to vote, unless any member wants to speak.

B. Pocker Sahib Bahadur: On a point of order. Is it not necessary that the schedule should be before the House before this clause is passed?

Mr. President: The idea is that the Drafting Committee will prepare the schedule and it will come before the House. This is only to lay down the principle here.

B. Pocker Sahib Bahadur: The clause refers to a schedule and in the absence of the schedule, are we in order in passing the clause with reference to a schedule which we have not seen?

Sri M. Ananthasayanam Ayyangar: Sir, when we pass this clause, we only approve of the principle that a number of things may be regulated by convention. That is all that is now put before the Assembly. So far as the schedule is concerned, it is open to some members to object that there should be no convention whatever. But the object here is that the conventions may be changed from time to time according to the exigencies and in the light of experience; otherwise we can say later on that it is a cumbersome or a lengthy procedure and we can modify the constitution as a whole. It is intended that the schedule may be modified even without the modification of the constitution. So far as the conventions are concerned, the schedule will certainly be placed before the Assembly and there will be opportunity for the members to strike out or add anything. At this stage the object is to ask the acceptance of the House for the principle that some conventions are to be put there in the form of a schedule which may be modified in the light of experience. The schedule will not be passed without the knowledge of the Assembly.

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): I do not think the argument that my friend has raised can be accepted. If we pass this clause just as it is, it means that we pass the schedule also. The schedule is mentioned there. I say if somebody wants to write down a schedule and attach it, it certainly will mean that the schedule has been passed. It is alright when he says it will be brought

[Haji Abdul Sathar Haji Ishaq Sait]

here. There is nothing to prevent somebody to write down a schedule and attach it. That is why I suggest, that the schedule should not be mentioned at all. The sentence runs like this:

"In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government."

Stop there. Do not mention 'as set out in the schedule'. Then you go on to say:

"but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions."

Do not mention the schedule at all. When it is ready it can be placed before the House so this difficulty can be obviated and I suggest that this should be done.

Mr. M. S. Aney (Deccan States): Mr. President, Sir, I really find it somewhat difficult to support the proposition as it stands here. It is an accepted rule that any proposition that is put before the House for consideration should be self-sufficient and self-explanatory. It must explain what it means and it should not stand in need of something else to be found somewhere and not placed before the House. I know what is wanted is that there should be a recognition to the principle that certain conventions have to be observed but you cannot put the proposition before the House and say 'I want the consent of the House that certain conventions will have to be observed in connection with the relation between the Minister and the Governor and so on'. The word 'certain' makes the whole thing ambiguous and an ambiguous proposition cannot be put before the House. That is the difficulty. Therefore, the best thing would be, and it would not be difficult to get the consent of the House when the schedule will be properly prepared, that the schedule may be attached to this and then the proposition can be brought at a later stage. Then it will be complete in itself and I do not think this House, after reading the schedule, will find it difficult to give its consent but to put the proposition as it is is to ask them to sign what may be called a kind of blank cheque. What that schedule will contain we do not know. It is stated here that the present Instrument of Instructions will take the place of this schedule. I do not know whether the Committee sitting there will consider all the conditions contained in the present Instrument of Instructions. That has yet to be considered. The Committee was appointed to draft this Report and I think the Committee must have considered even the Instrument of Instructions. If it was satisfied with that, it should have added it as a schedule. The very fact that that is not done means that the Committee did not think it worth while to embody the whole thing as it is and if that is so, we do not know what part of that Instrument of Instructions is going to be added.

Under these circumstances, this proposition means nothing more than taking the consent of the House to the conventions which at present are supposed to be contained in the Instrument of Instructions. The draft to be prepared by the committee is, of course, not known to this House. It is therefore unfair to the House to be asked to give its consent to the proposition as it stands. I therefore submit that it is better if the Honourable Mover will withdraw this proposition for the present and reserves his right to bring in the proposition for consideration when the schedule is completed.

Mahboob Ali Baig Sahib Bahadur: Sir, this Clause 14 does not provide for the Schedule to which it refers, to come before this Assembly. It simply states:

"In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in Schedule. . . . ."

Therefore, in the first place, there is no guarantee that this Schedule will at all come before us. Further, in the margin, it is noted that the conventions of responsible Government should be observed. We should at least know what are the conventions and the conventions of which Government are to be observed. Are they to be conventions of the Swiss Government or the British Government or the conventions established by Indian Governments? Or are they to be conventions that may be established hereafter?

Further, in the note it is stated:

"Schedule . . . . . will take the place of the Instrument of Instructions now issued to Governors."

We find there is no definiteness about the whole thing. We are asked to vote upon or to consider a question, the most important and most relevant part of which—the Schedule—we are not aware of. And what is more, there is not even the guarantee that this Schedule will ever come before us. I submit, Sir, that it is not fair that we should be asked to consider such a question at this stage. I submit that this clause may be taken up after the Schedule has been prepared. As it is, we are not told that the Schedule will be the same or similar to the Instrument of Instructions: if we had been told that, then there would have been some guidance for us. We could at least have referred to the Instrument of Instructions, and there might have been something definite to go by. Members who have the necessary patience, could have gone through the Instrument of Instructions and helped in the discussions. But as it is, the present proposition is bad because of its indefiniteness and it is vague, and also it is not self-contained and self-explanatory, as my predecessor has submitted.

Dr. P. S. Deshmukh (C. P. and Berar: General): Sir, I think there is considerable substance in the objections that have been raised against the clause as it stands. It is impossible to pass it in the shape in which we find it. We cannot possibly agree to the clause even as a matter of principle, without the Schedule being there. But this does not mean that the whole clause should be withdrawn or brought before this Assembly on some other occasion, as suggested by Mr. Aney. I suggest that the omission of a few words near about the word "Schedule" may meet the situation. We could say:

". . . . conventions of responsible Government as may hereafter be set out. . . ."

If this suggestion is accepted the consequent change in the wording is very little. This, I think, will meet the situation completely, and we will not then be forced to the position of having to agree to a Schedule which is not before us. This will also provide that hereafter, whatever we may like to have in the Instrument of Instructions shall come before us, and then there will be ample opportunity to consider them. This slight amendment that I have suggested, will, I think, meet the objections that have been raised here. Without it, we are entitled to object to it. We should not I think, Sir, permit anything so vague and uncertain as the present proposition to pass.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I do not see where is the indefiniteness about the proposition contained in Clause 14, which we are discussing now. While introducing this Report, the Honourable Mover made it quite clear that the purpose generally was to get the House to accept the main principles on which the Provincial Constitution will be framed. So far as this particular clause is concerned, it is clearly laid down that the Governor shall be generally guided by the conventions of responsible government as set out in Schedule so and so. Then it goes on further to say that the Schedule so and so will take the place of the Instrument of Instructions now issued to Governors. Now, Sir, this Instrument of Instructions is already in existence and those of us who have gone through these instructions will agree that there are directions in it as to how Ministers are to be chosen. It is all in the Act of 1935. (*An Honourable Member*: "That Act is not before the House.") It is not a question of the Act being before the House or not. The purpose of this Report is only to lay down the general principles and it is intended to ascertain the wish of the House with regard to them. We can later raise the point whether they are a departure from the existing ones. But as long as we accept the proposition that the majority party must be called upon to form the Ministry, I do not think there is any objection to our considering this Clause 14.

B. Pocker Sahib Bahadur: Sir, I wish that this House is taken more seriously than it is taken at present. In presenting this clause to this House and asking for its sanction, saying that the Schedule will come in later on, I think, the matter is not given the seriousness that it deserves. I know there are matters in which this House is not taken seriously, because we are here asked to sit down and listen to speeches which we do not understand and are asked to pass things which we do not understand. In the same manner this clause has been brought here and we are told that the schedule will be coming later on, but the clause may be passed. Even the Mover of the motion does not know what the Schedule is. I say this is absolutely irregular, and it is for you, Sir, to rule it as out of order.

I would just refer to two suggestions made by two members. One is by Mr. Haji Abdul Sattar, to remove the word Schedule, and retain the word conventions. But without knowing what the conventions are, and their nature, it will be absolutely improper and irresponsible for this House to pass this clause. The same remark applies to the modifications suggested to this clause by the previous speaker. I would therefore appeal to you, Sir, as President of this House, to protect the honour and self-respect of this House by acceding to the request of Mr. Aney to adjourn consideration of this clause.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, we are asked in short to agree to a schedule that is not in existence. One of the speakers has pointed out that the Schedule will be on the lines of the Instrument of Instructions to follow. But the Note, to the clause if I may be permitted to refer to it, merely says that the Schedule will take the place of the Instrument of Instructions. There is no indication that this Schedule will be on the lines of the Instrument of Instructions, or will be similar to it. I submit, Sir, that it will be asking the House to agree to something which is undefined and unknown. It will be just like asking a bridegroom to

agree to go through a marriage ceremony without the bride being present or even being known, on the promise she will be found and selected later.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, already the House has passed sub-clause (3) of Clause 6 which mentions a Schedule which is not reproduced there. Nobody raised any objection at that time. Besides, the Honourable Mover said at the very beginning that these are only principles to be accepted and the details will follow later. So I do not think there is anything to object to in the clause. We should not waste the time of the House in raising such frivolous objections.

Shri Mahavir Tyagi (United Provinces: General): Sir, I think Honourable Members on both sides have made out a good case. In the absence of the Schedule which will take the place of the Instrument of Instructions now issued to Governors I think the proposal is incomplete. We must consider a complete proposal. I therefore submit that the Mover, Sardar Patel, may be pleased to tell us if any Instrument of Instructions have been "now issued to the Governors". The word "now" introduces a new complication. I know the Instrument of Instructions issued to Governors before the popular ministries came into power in 1937. Is that what is referred to or has any new Instrument of Instructions been issued to Governors now with the change of Government? The word "now" seems to show that some new Instrument of Instructions may have been issued, though I have heard of none. I think the old one is meant here, and the word "now" has either crept in by chance or perhaps I am reading a wrong meaning into it. Anyway in the absence of details as regards the Instrument of Instructions it will not be proper to pass this as it is. My proposal therefore is that we should pass the proposal but not the note below it, and in place of this note we may say that the Schedule will be considered later. Since we are passing only the principles of our provincial constitution we can say that the Governors will have such and such powers as are mentioned in the Schedule, and of course the Schedule part of it we can consider later. No Schedule will be a regularly recognised schedule unless it is passed by this House. And that we can consider afterwards. But we can give these powers to the Governor and we do not complete that here; we will say that the schedule will follow. So I think we can pass this ***minus*** the note which may be taken out and another note may be substituted, or the whole clause may be postponed. I think my friends are right when they ask you to give your ruling. It is no part of the Mover's duty to withdraw or to press the motion. It is a point of order which you have to decide, whether in the absence of the Schedule it will be fair for the majority in the House to press this to a vote, because the House will have to vote without knowing the exact words of the Instrument of Instructions. I therefore submit that you, Sir, will have to decide this point of order.

Mr. President: I have said on a previous occasion when a question was raised with regard to these notes that these notes were not formally put to the House and they were not accepted by the House. They were only intended to give an indication of the meaning of the

[Mr. President]

clauses that were moved and we need not in any way be bound by what is contained in the notes. The clauses have therefore to be considered on their own merits without reference to the notes.

An Honourable Member: It is not the note; it is the clause itself.

Shri Raj Krushna Bose (Orissa: General): Sir, since we have heard so many objections to the passing of this clause and since there is some force in many of these objections I suggest that the Schedule should not be passed without the contents being known to the House. I submit therefore that, as we did in the case of Clause 8, this clause also may be referred back, redrafted and brought up tomorrow before the House so that the objections raised by the dissentient members may be met.

The Honourable Sardar Vallabhbhai Patel: Sir, I am afraid the preliminary observations that I made while moving my motion for consideration of this memorandum have not been followed; otherwise, I do not see any point in the objection that has been raised. I said more than once that this memorandum contains only the principles and if these principles are adopted the drafting will take place afterwards. It has been suggested that there is no guarantee that the Schedule will come. There is as much guarantee about it as the guarantee that the House will meet tomorrow. The clause says that there will be a Schedule: and that will come afterwards when the whole thing is ready. The Schedule will accompany the draft that will be put before the House when there will be ample opportunity to scrutinise the Schedule, to add to it or alter or modify it. I do not see how this principle can be called imperfect; you have to adopt a principle which is perfect in itself as the clause stands. Now you cannot have a guarantee for everything; this is a very simple thing and there can be no guarantee for it. One Honourable Member said that the House should be taken seriously. I think the debate should be taken more seriously. And if the debate had been followed more seriously I think all this debate on this clause would not have taken place. It is a simple proposition in which it is stated that the Governor will follow the conventions and for that a Schedule will be put hereafter. You know that the Governor is liable to impeachment and he must know that he acts under a specific responsibility and he will know his duties. Therefore, the Schedule must contain the specific duties that he has to perform. Therefore what the conventions are should be specified fully and in detail. When fixing these general principles we have not gone into the details of these conventions and therefore they will follow later, when you will have ample opportunity to discuss them. I see no reason why this clause should now be postponed at all. The note does not form part of that clause: it is only an explanation which you can ignore: you need not take it into account at all.

Shri Mahavir Tyagi: Now that the note stands cancelled there is no point of order, as the misunderstanding was due to the note.

Mr. President: As a matter of fact, no note which is contained in these papers forms part of the resolution before the House.

The question is:

"That Clause 14 be passed."

B. Pocker Sahib Bahadur: Sir, I made a request to you on this matter. The question that I raised was as a point of order and it is your duty to give a ruling as to whether this motion is in order or not. I want a ruling from you on this point before you put the clause to vote.

Mr. President: I do not think any question of a point of order arises. The question has been put.

The motion was adopted.

The Honourable Sardar Vallabhbhai Patel: Sir, I seek your permission that Clause 15 do stand over until such time as Clauses 20 and 22 are considered, because it would be more appropriate to take it at that time. I therefore ask your permission that Clause 15 stand over.

Mr. President: Clause 15 shall stand over.

CLAUSE 16

The Honourable Sardar Vallabhbhai Patel: Sir, I move Clause 16.

"(1) The Governor shall appoint a person, being one qualified to be a judge of a High Court, to be Advocate-General for the Province to give advice to the Provincial Government upon legal matters.

(2) The Advocate-General shall retire from office upon the resignation of the Prime Minister, but may continue to carry on his duties until a new Advocate-General shall have been appointed.

(3) The Advocate-General shall receive such remuneration as the Governor may determine."

(Messrs. P. Kakkan, M. Ananthasayanam Ayyangar, H. V. Pataskar, K. Santhanam and Gupta Nath Singh did not move their amendments.)

Mr. President: The question is:

"That Clause 16 be passed."

The motion was adopted.

CLAUSE 17

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move Clause 17:

"All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor."

This is only a formal motion and I move it for the acceptance of the House.

Sri M. Ananthasayanam Ayyangar: Sir, I do not propose to move my amendment.

Mr. President: The question is:

"That Clause 17 be passed."

The motion was adopted.

CLAUSE 18

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move Clause 18:

"The Governor shall make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of duties among Ministers."

(Messrs. Kala Venkata Rao, M. Ananthasayanam Ayyangar and R. K. Sidhwa did not move their amendments.)

Mr. President: The question is:

"That Clause 18 be passed."

The motion was adopted.

The Assembly then adjourned till 3 P.M. on Friday, the 18th July, 1947.

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No. 5



Friday
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1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Price 5 annas

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 18th July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at 3 P.M., 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 the Register :

Dr. Raghunandan Prasad (Bihar : General).

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION—*contd.*

CLAUSE 8

Mr. President : The House will now proceed with the consideration of Clause 8 which was passed over yesterday.

Mr. H. J. Khandekar (C. P. and Berar : General) : *[Mr. President, Guru Agam Das, one of the members of C.P., is a member of the Constituent Assembly. He has not received the notice of this session as yet. The reason is that the address which has been given in the list is wrong. He lives in Raipur District, but Bilaspur District has been mentioned in the list. He has not received the letter by now.

I would request the President to issue him the notice of this session by telegram.]*

[ ] English translation of Hindustani speech.

Sir B. L. Mitter (Baroda State): Mr. President, you appointed a Committee to examine Clause 8 of the Provincial Constitution. The Committee have unanimously made a Report* and they have re-drafted that clause in these terms:

"It shall be competent for a Province, with the previous sanction of the Federal Government, to undertake, by an agreement made in that behalf with any Indian State, any legislative, executive or judicial functions vested in that State, provided that the agreement relates to a subject included in the Provincial or Concurrent Legislative List.

On such an agreement being concluded, the Province may, subject to the terms thereof, exercise the legislative, executive, or judicial functions specified therein through the appropriate authorities of the Province."

Sir, I will say a few words in explanation. It is well-known that the authority of a provincial government, whether executive, judicial or legislative, cannot extend beyond the boundaries of the province; that is to say there is no extra-territorial authority vested in any province. This clause gives a province extra-territorial jurisdiction by agreement with a State. The reason for it is this: Suppose a very backward State adjoining a province has some executive or judicial functions but has no machinery to exercise those functions. Then it can come to an agreement with a neighbouring province so that the machinery of the neighbouring province may be available to that backward State for the benefit of both. But it may be that such an agreement, if made between two parties, may act prejudicially to a third State or a third Province, and in order to safeguard against that possible risk, the words "with the previous sanction of the Federal Government" have been inserted, so that the Federal Government will know that here is an agreement between a province and a State and that the agreement is beneficial to both and injurious to none, before the Federal Government gives its sanction to the agreement. By this draft the authority of a province is extended beyond its territorial jurisdiction. The redraft has been necessary by reason of some objections raised by Sir Alladi Krishnaswami Ayyar which were found to be valid objections. I hope this redraft avoids all ambiguities. Sir, I move.

Mr. President: Does anyone wish to say anything about this clause?

Sir Alladi Krishnaswami Ayyar (Madras: General): I gave notice of an amendment.

Mr. President: There is an amendment by Mr. Gupte to be moved, I will give you an opportunity, Sir Alladi.

Mr. B. M. Gupte (Bombay: General): I beg to move that the following new clause.....

Mr. President: Sir Alladi Krishnaswami Ayyar, you wanted to speak about the resolution. I thought Mr. Gupte's was an amendment but it is altogether a new proposition.

Sir Alladi Krishnaswami Ayyar: Mr. President, Sir, in supporting this amendment, I just want to make a few observations. I gave notice of an amendment substantially in these terms. The Committee

*Appendix.

that was appointed by this House was pleased to substantially adopt that amendment with the modification that the consent of the Central Government should be obtained. Now, as this House is aware, there are quite a large number of minor or small States spread over India which may find it difficult to provide adequate or efficient machinery for the exercise of certain administrative or judicial functions. So, in the interests of both economy and efficiency, it is but fit and proper to provide that the neighbouring provinces should be in a position to undertake the exercise of certain administrative and judicial functions of these States under arrangements entered into with them and to give legal sanction to such arrangements. From the very nature of things, the provinces cannot undertake functions different from the normal functions vested in them as units of the Indian Union. Accordingly, the clause provides for the exercise only of functions vested in the provinces under the Provincial and Concurrent list. In view of the importance of the task undertaken and the relation of the provinces to the Indian Union, provision is made for obtaining the previous sanction of the Union Government. It is hoped that when the Constitution is finally settled, the Union Constitution may also provide for the government of the federation exercising plenary jurisdiction in territories ceded to, or coming under the control of, the Union Government, similar to the jurisdiction exercised by the agencies of the British Crown under the British Foreign Jurisdiction Act. The provision now inserted is, of course, without prejudice to any such general provision being made.

I might mention, Sir, that some suggestion has been made in certain quarters that provision may also be made for provinces ceding jurisdiction to the States. We are not dealing with States constitution, but when the States come into the Union, in regard to any outlying tracts I have no doubt that this Assembly will favourably consider any such suggestion and see if it is possible to concede any jurisdiction in regard to any outlying tracts in favour of States which are in a position to undertake that responsibility.

With these words, I beg to support the resolution before the House moved by my Honourable friend, Sir B. L. Mitter.

Mr. A. P. Pattani (Western India States Group): Mr. President, Sir, I was not able to hear quite clearly what the Honourable Member said but I unerstood him to say that outlying tracts of British Indian territory falling within the area of an Indian State should similarly come under the jurisdiction of that State with the permission of the Central Government. Such acquiring of jurisdiction should not be only one-sided. I believe there will be in time to come during the discussions over the federal constitution something in the shape of a constitution for groups of States, but apart from that what I wish to say now is that it should be possible for a State which is able to exercise functions on behalf of a province to obtain those powers under agreement with a provincial government and with the consent of the federal authority.

Sir B. L. Mitter: Mr. President, this question of reciprocal arrangement between a province and a state was considered by the committee appointed by you and the committee came to the conclusion that since they were dealing with the provincial constitution, jurisdiction of States would be inappropriate in that place. It was decided that we should say nothing about the reciprocal arrangement at this stage. Then, the question arises at what stage or in what place this reciprocal arrangement could be made. Well, there may be various answers. If any acceding States are intended to be given extra-territorial jurisdiction over any tract which is now British India, then by means of a similar clause, that is with the consent of the Union Government, an arrangement may be made between a State and a province giving the State extra-territorial jurisdiction over that tract. The State itself in its own legislature may make such law. This point has not been overlooked and I hope this House will agree to a reciprocal arrangement being made in favour of a state as it is now asked to make in favour of a province.

Mr. President: The question is that Clause 8 be redrafted as follows:

"8. It shall be competent for a Province, with the previous sanction of the Federal Government, to undertake, by an agreement made in that behalf with any Indian State, any legislative, executive or judicial functions vested in that State, provided that the agreement relates to a subject included in the Provincial or Concurrent Legislative List.

On such an agreement being concluded, the Province may, subject to the terms thereof, exercise the legislative, executive or judicial functions specified therein through the appropriate authorities of the Province."

The motion was adopted.

Mr. B. M. Gupte: Sir, I beg to move that the following new clause be added after Clause 8 as proposed by the *ad hoc* Committee appointed to redraft the clause.

"8-A. Subject to the provisions of the Constitution, and of any special agreement referred to in Clause 8, the executive authority of each Province, shall extend to the matters, with respect to which the Provincial Legislature has power to make laws."

The *ad hoc* Committee that was appointed to redraft this clause has put forward its report and we have just adopted that clause as clause 8 as redrafted by the Committee. The original clause 8 referred to 'executive authority', but unfortunately through oversight the redraft failed to incorporate that portion of it as it stood originally. Therefore my amendment supplies that deficiency. The redraft as it is now passed refers only to the special agreement; while this new clause includes the executive authority of the province. I therefore commend my amendment for acceptance; because it actually supplies only a deficiency acceptable to the Committee and, I am sure, the Mover.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): I accept the amendment moved by Sir B. L. Mitter and the addition moved by Mr. B. M. Gupte because in the original clause there was a reference to agreement which now has been specified by the amendment of Sir B. L. Mitter. But the original clause must remain. Therefore Mr. Gupte has moved that the additional clause may be added

after Sir B. L. Mitter's amendment. Therefore, I accept Sir B. L. Mitter's amendment as added to by Mr. Gupte.

Mr. President: Does anyone wish to speak about the amendment to this clause moved by Mr. Gupte?

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I do not think this amendment is necessary. The matter should, if necessary, be inserted in the Provincial or Concurrent Legislative Lists. To the extent as may be provided in this Legislative List the authority of the province regarding legislative and executive action would be complete. If there is any lacuna here, it is a matter for amendment of the Legislative Lists. There is no need, in my humble judgment to adopt a clause like this. I only make this submission to this House so that the same may be considered, and if necessary, it may be passed, but if unnecessary, it should not be passed.

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): It seems to me, Sir, that a word of explanation is necessary, particularly with reference to the remarks made by the last speaker. He seemed to think that this amendment which has been numbered as Clause 8-A would be unnecessary. I should say, Sir, on the contrary it is very necessary for this reason. We no doubt distinguish between the powers of the federation and of the units in the constitution. Those powers refer only to legislative powers. Legislative powers are divided between the Centre and the units but we have got also to define the scope of the executive authority of the province. We shall define it in the case of the federation also. Unless we say that the executive authority of the province will, subject to the exception mentioned here, be co-extensive with the legislative authority of the province, we shall not be indicating how far executive action can go at all. I therefore think, Sir, that it is a very necessary amendment.

Sir B. L. Mitter: Sir, I think there is a certain amount of confusion in the minds of some members. When I said that we had re-drafted this clause, that re-draft refers to the extra-territorial part of the jurisdiction. But the main clause deals with the normal territorial extent of provincial jurisdiction. You must say somewhere in the constitution on what matters or within what territorial limits the provincial government has to function. Clause 8 says:—"Subject to the provisions of this constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws". Now, we know that under the 1935 Act, the provincial jurisdiction extends over the provincial list and the concurrent list and not on the federal list. Here also it is said, "with respect to which the Provincial Legislature has power to make laws." That is so far as the subject matter jurisdiction is concerned. There must be some territorial jurisdiction also. It is stated that the territorial jurisdiction of the executive power is coterminous with that of legislative power. We have to have territorial limits of provincial jurisdiction as well as subject jurisdiction. Therefore, this is necessary. What I moved in the first

[Sir B. L. Mitter]

instance was with regard to the extra-territorial jurisdiction of a province. Therefore, I submit, Sir, that it is necessary to have Clause 8 as printed, in the constitution.

Mr. President: I do not know if there was any misunderstanding in the minds of the members when the clause was put to vote. I take it that what Sir B. L. Mitter means is that the clause as it stood in the original should remain there and what he has moved today must be added to it. All the three clauses are to remain.

Mr. Gupte wants to replace the original Clause 8? I see.

I will put the clause just now moved by Mr. Gupte to vote.

Clause 8-A was adopted.

Mr. President: We will now pass on to Chapter II. We left over Clause 15. Are we ready?

The Honourable Sardar Vallabhbhai Patel: No.

Mr. President: We will then go on with Chapter II—Rule 19.

CHAPTER II—RULE 19

The Honourable Sardar Vallabhbhai Patel: I move:

"19. (1) There shall for every province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly; in the following provinces, there shall, in addition, be a Legislative Council."

I would suggest, Sir, that so far as the Upper House is concerned, we shall have to consult the leaders of the Provinces to settle amongst themselves as to what provinces require a Second Chamber and request you, Sir, to appoint a Committee of the Provincial Premiers to meet and give us a list so that the list may be added hereto.

"(2) The representation of the different territorial constituencies in the Legislative Assembly shall be on the basis of population and shall be on a scale of not more than one representative for every lakh of the population, subject to a minimum of 50 for any province.

The elections to the Legislative Assembly shall be on the basis of adult suffrage, an adult being a person of not less than 21 years of age.

(3) Every Legislative Assembly of every province, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting.

(4) In any Province where the Legislature has an Upper House, the composition of that house shall be as follows:

(a) The total numerical strength of the Upper House should not exceed 25 per cent. of that of the Lower House.

(b) There should be within certain limits functional representation in the Upper House on the lines of the Irish Constitution the distribution being as follows:—

One-half to be elected by functional representation on the Irish model;

One-third to be elected by the Lower House by proportional representation;

One-sixth to be nominated by the Governor on the advice of his Ministers."

I move this clause for the acceptance of the House We have decided that there shall be a Legislative Assembly for every province and wherever there is to be a bicameral system, the provinces will give a list which will be attached here. At present, as you all know, there are about five or six provinces in which there is only one House such as Orissa, Punjab, Sind and the N. W. Frontier. In the other provinces there are two Houses. Now, the provinces of Bengal and the Punjab have been divided. It is a question whether in the small provinces or whether in Bengal when divided, we want an Upper House. We are concerned with West Bengal alone. It appears there is a big European representation which from August 15 will disappear.

The representation of the different territorial constituencies will be on a scale of not more than one representative for every lakh of the population. This may perhaps in some provinces be increased; where the provinces are smaller, this proportion will be less. Therefore, we have fixed a minimum. A suggestion may be made for fixing a maximum also. Now, elections are to be held on the basis of adult franchise. We have already settled about that and the age limit is also fixed as 21 years. The life of the Legislature will be four years.

Wherever there is an Upper House, we have adopted the Irish model for the composition of the members; a proportion shall be by functional representation; one-half to be elected by such representation, one-third to be elected by the Lower House by proportional representation and one-sixth to be nominated by the Governor on the advice of his Ministers.

I move this proposition for the acceptance of the House.

Mr. President: I have got notice of a number of amendments. I request the members to move them one by one.

(Messrs. K. Santhanam, P. Kakkan and H. J. Khandekar did not move their amendments.)

Saiyid Muhammad Saadulla (Assam: Muslim): Mr. President, Sir, I beg to move:

"That in sub-clause (2) of Clause 19, for the word 'lakh' the words '2 lakhs' be substituted"; and

"That in sub-clause (2) of Clause 19, after the words 'any province', the words 'and a maximum of 300' be inserted."

My first amendment is only a means to an end and the end is to fix a maximum. A minimum has been suggested in the report. For smaller provinces, the recommendation in the report may work very well, that is, under the new constitution, representation should be one member for every lakh. But if we apply this principle to the bigger provinces, in my opinion, the legislative bodies will be so unwieldy that work will suffer. Take for example the most populated of the Provinces, the United Provinces which have a population of more than five and half crores according to the census of 1941. If we are to give as recommended in this Draft Constitution one representative for each

[Saiyid Muhammad Saadulla]

lakh, the House will have at least 550 members. We know that in every census the population in India increases on an average by 15 per cent. So after 1951 we will have to increase this big number by another 15 per cent. or in other words, U. P. will have a Provincial Assembly of more than 600 persons. Well, the same will occur in the Madras Presidency which has now 49,300,000 population and so will have a House of 493. Even Bihar which has got a population of 36,300,000 will have at least 363 members in its Provincial Legislative Assembly. In my opinion, Sir, these are very substantial numbers. It has been the experience of almost everyone that the larger the number in a body the less the interest of parties concerned therein. In order to make these constitution of the provinces not unwieldy, I have proposed that a maximum should be fixed and the maximum should be 300. In the present constitution of 1935 we had adopted similar reduction and therefore there is nothing novel in my suggestion, *e.g.*, Bengal which till lately had a House of 250 members counted over 6 crores of people in the last census, Madras which now counts 49,300,000 people has a House of 216, U. P. 268, and Bihar 152.

There is another aspect to the same question. In the report or rather the Draft Constitution which is going to be placed before this Assembly for the Union Parliament,

"The House of the People, [it says in Clause 14(1)(c)] shall consist of representatives of the people of the territories of the Federation in the proportion of not less than 1 representative for every million of the population and not more than 1 representative for every 750,000 of the population."

Now, that the Indian Constitution will be functioning for a population of 30 crores, under this computation the House of the People will have a minimum number of 300 represenatives and a maximum of 400. It is needless for me to emphasize that this National Assembly will be the centre of all political and executive authorities of the Federation of India. If we are satisfied with a representation ranging between 300 to 400, I think the Provincial Legislative Assembly which will be limited in its jurisdiction to the territories of the Unit only should not have a higher number of representation in their Assembly. It is for this purpose, Sir, that I recommend that as we have provided for a minimum of representation to 50 similarly we should provide a maximum also and according to my humble opinion, an assembly of 300 will give a wide scope for all provincial activities.

(Messrs. V. I. Muniswami Pillay, Gokulbhai D. Bhatt, R. K. Sidhwa, D. P. Khaitan, and H. J. Khandekar did not move their amendments.)

Mr. R. K. Sidhwa (C. P.: General): Sir, in the note to this clause you will kindly find a sentence as follows:

"There is to be no special representation in the Legislative Assembly either for universities, or for labour, or for women."

So far so good. But no mention has been made regarding trade, commerce and industry. I have moved an amendment:

"That there should be no special representation to Trade, Industries or Commerce."

I do not know whether this is an omission. If there is to be no special representation to any special interest, then I do not wish to move my amendment. I therefore desire that none of the interests will be given preference.

Mr. President: That is only a note. It is not a part of the clause.

Mr. R. K. Sidhwa: The intention of the Committee is indicated in this note. I entirely agree with what the Committee has stated because now everybody has to come from the front door having franchise extended to all interests and no special preference to any interest. I do not know why trade, commerce and industry have been omitted. I request that the Honourable Mover will please make it clear in his reply that all special representation will go away.

Mr. President: I take it, Mr. Sidhwa, that you have not moved your amendment because there cannot be an amendment to a note. Mr. Desai.

Shri Khandubhai K. Desai (Bombay: General): My amendment* is almost on the same lines as that of Mr. Sidhwa, and as I understand that hereafter we are going to have only territorial constituencies and there will not be any special constituencies, I do not wish to move my amendment.

Mr. President: Mr. Omeo Kumar Das.

Shriyut Omeo Kumar Das (Assam: General): Mr. President, Sir, I beg to move:

"That in sub-clause (2) of Clause 19, for the word 'lakh' the words 'seventy-five thousand' be substituted."

Though my Honourable friend Sir Saadulla has moved an amendment to raise the scale of population from one lakh to two lakhs, I am sorry I have, coming from the same province, of Assam, to differ from him. It is the universal demand in Assam that the scale of population in relation to the delimitation of the constituencies should be lowered to the figure of seventy-five thousand. As you may know, Sir, there are many backward communities in Assam, and these communities will have no chance of being elected in bigger constituencies. Many of us Congress-men, though we have not met in the Assam Provincial Congress Committee, have come to a decision about it. The President of the Assam Provincial Congress Committee has already submitted a memorandum to the Honourable Sardar Patel on this very point for his consideration. I trust the Drafting Committee which will be formed hereafter will also take this point into consideration.

I want to press before this House another point. The Honourable Sardar Patel has just now told us that Assam has no Upper House. In fact, we do have an Upper House which we want to abolish. We are almost unanimous with regard to this demand. We are not going to have any Upper House in future, which we have been having so long. It is but just and proper that the backward communities of our province should be given the chance of being elected to this only House,

*That at the end of the Note under Clause 19, the following be added:
"or for landholders, or for commerce and industry."

[Shriyut Omeo Kumar Das]

I mean the Lower House. I want to press before this House in particular that when you fix the maximum number of members for the legislature there can be no difficulty in the case of major provinces like Madras or U. P. of having unwieldy House by lowering the scale. This difficulty can be met by fixing the maximum,—as Sir Saadulla has already suggested limiting the maximum number to 300,—and to my knowledge the Honourable Mover will accept this amendment. In view of this I think the House may have no difficulty in accepting my amendment.

With this I commend my motion for the acceptance of the House.

Mr. President: Rev. Nichols-Roy.

The Honourable Rev. J. J. M. Nichols-Roy (Assam : General) : Mr. President, Sir, I beg to move my amendment which stands as follows:

"That the following proviso be added to sub-clause (2) of Clause 19:

'Provided that in giving representation to any territorial area or areas inhabited by hill tribes, the Provincial Government may determine a lower basis of population than one lakh and the total representation of the Province shall be increased accordingly'."

My reason for giving this amendment is this that the language of sub-clause (2) of Clause 19 seems to prevent any province from having a number of representatives in the Legislative Assembly that will be more than the proportional number of one man for every lakh of the population. If that is the meaning of the language of this clause, then it will be a real hardship on the people of the hills in Assam. In the hill areas of my Province we have large territories which are inhabited by a proportionately small number of people. For example, in the Lushai Hills we have an area of over 8,000 sq. miles, but inhabited by a people called Lushais—(they call themselves Mizoos)—numbering only a little over a lakh and a half. In one of the plains district, however, there is an area of about 3,800 sq. miles with a population of 12,54,000. This being so, if the basis of population of one lakh per member is applied to the hill areas also, it will clearly be a great and terrible hardship to the people of the hills.

Then, Sir, there is another area—the North Cachar hills—with an area of about 2,000 sq. miles which is inhabited by hill tribes, with a population of only about 37,000. This morning just before we came here we got a letter from the people of that area saying thus:

"Going through the papers, I find that the Model Provincial Constitution Committee has recommended that representation to the Provincial Legislatures shall be on the basis of population of not more than one man for one lakh, subject to the minimum of 50. This, if adopted without a proviso for special cases, will permanently deny representation to North Cachar hills which has a population of only 37,000. To deny representation to a whole sub-division on the ground of population would be an injustice and even absurd."

Sir, this is the feeling among the hill people of Assam, and it applies not only to this particular hill area, but it applies to all the hill areas in Assam.

Even now, Sir, there is representation to the Assembly of Assam from the hill areas with a much lower population basis than one lakh. There is an area represented by one representative, but having a population of only about 85,000; there is another with a population of about 70,000 sending one representative. Now, if this clause means that no representative can be sent from a territory which has a population of less than a lakh then it means that these constituencies will have to be abolished. When we are talking about the coming of freedom for India, these will mean slavery to the hill people which the hill people cannot accept as justice at all. Therefore, Sir, I request that the drafting of this clause should not prevent a lower basis of population in a province which needs such a lower basis of population for one member in the Legislature. I am told by someone that this clause probably allows all this. It allows that a province should have representation between 50 and, if a maximum is put, 300 or 400. But it seems to me that the language may be interpreted in a different way altogether. If the interpretation is that a province is free to fix the number of representatives then it will be all right. But if it is fixed only on a basis of one representative for 1 lakh it will be a great hardship and its operation will work to the detriment of the people of the hills area. We must also consider the fact that there are some people in the hill areas of Assam now who want to be independent altogether and stand as a separate state, some who want to join Burma and some others who probably want to join Pakistan too. If this kind of representation be forced upon the hill people of Assam, it will help that propaganda and will cause a great deal of trouble to India. Therefore I would request that the Mover of the resolution may enlighten the House whether the province will be able to give representation on a lower basis to the peoples of the hill areas where in a large territory the population is small. And these territories are sources of potential wealth and are therefore very important to the province of Assam. If that is not considered it will be a great hardship indeed. Sir, I commend my motion for the acceptance of the House.

(Messrs. M. Ananthasayanam Ayyangar, Shibbanlal Saksena and Biswanath Das did not move their amendments.)

Mr. Lakshminarayan Sahu (Orissa: General): Mr. President, Sir, I want to add a sub-clause at the end of sub-clause (1) of Clause 19: "Orissa may have an Upper House when Orissa States will join the Province of Orissa". Half of Orissa is practically Orissa States and there is a great prospect now that the Orissa States will be joined to the present political Orissa. As such, in order to bring about some good feeling among the Rajahs of the Orissa States I think an Upper House will be a great need in Orissa. That Upper House will act as a good check upon the democratic outbursts. They generally have the fear that there will be too much of democracy and that they will be swept away. Therefore I think there should be a definite sub-clause like this in Clause 19.

Besides, there is a prospect of revision of boundaries and in that case the boundary of Orissa will be extended in different directions

[Mr. Lakshminarayan Sahu]

That is what we hope, and the population will also increase. The new population that will come into our fold will gradually be one with us only when they feel assured that there is an Upper House where all the legislation that will be passed in the Lower House will be revised and the legislative actions properly done. That is another reason why there should be a provision like this.

The Mover of the resolution, Sardar Vallabhbhai Patel, has said that it is left to the province which may choose to have an Upper House if it so likes. It is very good. But at the same time I want to point out to the whole House here that there is really great need for an Upper House. I therefore move :

"That the following be added at the end of sub-clause (1) of Clause 19 :

'Orissa may have an Upper House when Orissa States will join the province of Orissa'."

I move my next amendment also, *viz.*

"That after item (b) in sub-clause (4) of Clause 19, the following new item be added :

'(c) There should be the power of recall for voters of every constituency in case in any situation they want to recall their elected member or members'."

This is essentially necessary because we feel that at times situations arise when voters want to remove a member from the Legislative Assembly but cannot do so because there is no such provision in the Act. When we are going to have a new Act, I think we should provide for this new clause, namely, recall.

As regards the difficulty of how to operate it, I think there will not be much difficulty because the constituency will be very small. Then we may provide that if two-thirds, or some such proportion, of the voters vote against a member whom they do not like, in that case the member goes out. As regards the full procedure I am not conversant with it and it may be found out.

Moreover I think a provision like recall is necessary when we are going in full force towards democracy, and without a provision for recall our legislation will not be complete because it is being gradually provided in other places, as for instance in Switzerland and in some American States. As early as in 1922 in the Bihar and Orissa Legislative Council, when Mr. Madhusudan Das of Orissa was the Minister for Local Self-Government, he introduced this provision of recall in the local Legislative Act there. If there be a fear that the provision may be misused and it will be difficult for the people to work it, I do not think there is much in that fear, because though there is provision for this recall in the Bihar and Orissa Local Self-Government Act it has not been used although people have begun to talk about it. It is not very easy to take advantage of this. Therefore there should be no such fear that if there is a provision of recall people will rush into it and there will be various parties trying to oust one member and put in another. Even if that be so I would welcome it because

that will be a sort of education for our people. Our people generally after giving their vote once do not think about it afterwards, but if there be such a thing they will begin to think and the people will be more active and agile. I therefore move that these two sub-clauses should be inserted in this clause.

Then I will touch on another point as regards population. My friends Mr. Omeo Kumar Das and Mr. Nichols-Roy have said that the constituencies should be small. I also feel like that, because in Orissa there are many aboriginal people and they are all different groups. The people can send in one of their own people if the constituency is small. For instance the *Amanatvas* are only 60,000 people; now they cannot send their own representative because their number is small. Then there are other hill tribes who generally number twenty or thirty thousand. Of course we cannot extend this legislative power to all of the groups but we should still have the desire that those people on the hills who have been neglected so long should be given powers in such a way that they may be politically educated as quickly as possible, so that we may be able to bring them up to our level. Sir, I move.

Mr. R. K. Sidhwa: Sir, I beg to move that in sub-clause (2) of Clause 19 for the figure "50" the figure "60" be substituted. In the new constitution we are going to have a wider franchise which means a larger number of representatives in the Legislature. It is very desirable that following the democratic spirit we should have in the coming constitution a larger number of members in the Legislature. I do not share the views of Mr. Saadulla that a bigger Assembly is cumbersome and unwieldy. These stock arguments are often advanced when people do not want a bigger Assembly. Here is the Constituent Assembly consisting of about 225 members. Is it cumbersome and unwieldy? The debates are attentively listened to and we are conducting the business smoothly and rapidly. Even in the Central Legislative Assembly or in the Provincial Assemblies with only about a hundred members I have sometimes seen a want of a quorum and the Speaker or President had to go on ringing the bell. But here we have such a large number of members but still they are attentive to their duties and we get the benefit of their knowledge and experience out of which will be framed a very useful constitution. So I support the Mover's proposition that in the Assembly there should be one member for every lakh of the population.

Then, Sir, coming to the minimum, I have suggested 60 for 50, and the reason is this. The smallest province in the Indian Union today is Orissa with a population of 84 lakhs and they have a House of 60 with an electorate which is narrower than what it will be hereafter. With a larger electorate to come we cannot cut that down to 50. The two new provinces of East Punjab and West Bengal will each have a population of 2 crores and 40 lakhs. They are big provinces and we should see that they get full representation. Therefore I suggest that for provinces like Assam or Orissa, etc., the minimum should be 60 as at present.

Mr. President: I think Mr. Sidhwa has misunderstood the clause. That is only the minimum. If the population is 84 lakhs the number will be 84 according to this clause. The amendment does not touch those cases; it touches only those where the number is less than 50.

Mr. R. K. Sidhwa: But if there is to be a minimum I want it to be 60. That is my amendment and I hope the House will accept it. The more members there are I think the better it is because it would be well to have the benefit of their intelligence, knowledge and experience. Sir, I move.

Mr. President: The Resolution and the amendments are now open to discussion.

The Honourable Mr. Gopinath Bardoloi (Assam: General): Mr. President, I did not want to participate in this debate. But since my friend Mr. Nichols-Roy has placed certain issues before the House, I consider it necessary to make certain observations.

Sir, I have the privilege of being the Chairman of the Eastern Tribal and Excluded and Partially Excluded Areas Sub-Committee. In that connection we had not merely an opportunity of touring the hill areas but also of studying the conditions of the people in the hills. From a broad point of view it can definitely be stated that the method of representation proposed to be introduced for the general population cannot be made to apply to the people in the hills.

It will be seen that Assam today, with Sylhet gone, has a population of 71 lakhs and the extent of the province as it stands is only 62,000 square miles. Most of the people live in an area of about 30,000 sq. miles in the plains. With the hills, Assam comprises now 62,000 sq. miles. If you deduct 30,000 sq. miles, you will find that thirteen lakhs of hills people live in 32,000 sq. miles. What is more important for us to know is that they live as separate tribes and not as we do in the plains in a common pattern. Therefore, if any representation is proposed to be given to these people, it must be different from the manner in which representation is proposed to be given to the people in the plains. In view of this state of affairs, I think that the proposition that has been put before the House by Rev. Nichols-Roy should be supported by us generally. But I do not know whether it is necessary at all to accept the amendment as it stands. It is possibly known to all of you that the Advisory Sub-Committee will be making some recommendations in respect of representation also. Now what can be done here is that we can agree to accept the general principle so far as all other areas than the plains are concerned. I am not discussing here what that representation ought to be and whether it should be one representation for a unit of 75,000 or 1,00,000 or even 2,00,000 of the population, although in my opinion this should vary according to the population and area of the different provinces. But the broad fact should be accepted that these areas should be represented under some special plan. Mr. Nichols-Roy's recommendation is that this matter should be left to the provincial governments concerned to

determine. I think the better course would be to leave this matter in the hands of the Advisory Sub-Committee and await their recommendations. The House can then consider the matter. The House should also bear in mind that in the present constitution, these hill people enjoy considerable weightage in representation. With these observations that the spirit of Rev. Nichols-Roy's amendment should be accepted, I resume my seat.

Mr. H. V. Kamath (C. P. & Berar: General): Mr. President, Sir, the second half of the first sub-clause of this clause reads thus: "in the following provinces, there shall, in addition, be a Legislative Council" and then in brackets it lays down "(here enumerate those Provinces, if any, which desire to have an Upper House)". I am glad that the words "if any" have found a place here. I hope to God that no province will elect to have an Upper House. But the possibility cannot be entirely ruled out of certain provinces choosing to have an Upper House. Therefore I stand before this House today to put in a plea for the abolition of the existing second chambers and against the creation of new ones.

Sir, in modern political practice, the second chamber is fast becoming an anachronism. In a federal democracy—the structure which we have envisaged for our Hind, our Bharatavarsha—we may visualise a second chamber for the Centre, but it would be pernicious and vicious to have a second chamber in the constituent units of our federal democracy.

Various motives have actuated the creation of second chambers all over the world. In the last century, it was stated more or less as a political axiom that no democracy should be without a second chamber. But in the 20th century this practice is fast fading out and giving way to uni-cameral legislatures. Various motives have, as I said, led to the creation of second chambers. Firstly, there has been the desire to maintain the old tradition. I am glad that in India at least we do not have any such tradition. In the first decade of this century the British Government created second chambers mostly as a hang-over from the last century. But in the middle of this century this system stands discredited.

The second motive which has actuated the creation of second chambers is the desire to safeguard the interests of the propertied classes and vested interests. If we have second chambers in every province of our Federation, then I am afraid, these very classes which propped up British rule in our country, which buttressed and bolstered up British rule in the days of its decline, will find a place in those bodies. I for one would not support such a development in our country.

The third motive which has actuated the creation of second chambers is that they would act as a sort of check on the impulsive and hasty tendencies of the Lower House. Well, Sir, in modern democracies the practice is for legislation to pass through a very elaborate process, and as such there is no need for any multiplicity of legislative checks, specially considering the times through which we

[Mr. H. V. Kamath]

are passing. When we are aspiring to build a strong Union, we cannot afford this luxury of a second chamber which I am afraid will hamstring the Government in the provinces and render the Government static or at any rate less dynamic. We want these Governments should be dynamic and I am certain that second chambers would act as a drag on them in every province. These are the considerations which impel me to oppose the creation of second chambers. I hope that the constituent units of the Federation will not elect to have second chambers in our Hind, our Bharatavarsha.

Mrs. Renuka Ray (West Bengal: General): Mr. President, Sir, I rise to support Clause 19 and in particular section (2) of this clause which provides for territorial representation without reservation of seats. We are particularly opposed to the reservation of seats for women. Ever since the start of the Womens' Movement in this country, women have been fundamentally opposed to special privileges and reservations (*hear, hear*). Through the centuries of our decadence, subjection and degradation, the position of women too has gone down until she has gradually lost all her rights both in law and in society. None the less, with the first stirrings of consciousness amongst women, there never arose any narrow suffragist movement that has been so common in so many so-called enlightened nations. Women in this country have striven for their rights, for equality of status, for justice and fairplay and most of all to be able to take their part in responsible work in the service of their country. The social backwardness of women has been sought to be exploited in the same manner as backwardness of so many sections in this country by those who wanted to deny the country its freedom.

Before the 1935 Act came in, the representatives of India's women made it very clear that they were against the reservation of seats or any special privileges for women. They made this clear through the All India Women's Conference. Our representatives, the three women who gave evidence before the Joint Parliamentary Committee, made it clear in unequivocal terms—(I may say that Rajkumari Amrit Kaur was one of the three women)—that we did not want reservation, but in spite of our protests, and in direct contravention to our desires, reservation of seats was brought into the 1935 Act. This Act has been so great a factor in bringing dissensions in our fold and has at last divided the country. But where the heart is strong, where there is sound judgment, no machinations can divide and the women did not allow themselves to be caught in the trap. It would be wrong to say that all the credit for our attitude goes to women. From the very start of our national awakening in this country, enlightened men have encouraged women to come forward as equal partners in the struggle for freedom and to do service for national regeneration in the different walks of life. When Mahatma Gandhi gave his call so specifically to the women of this country to take part in the national movement, all the social barriers of centuries broke down. There are no words to convey the gratitude of the women of this country to this Great man—who has today brought the country to the very threshold of freedom

(*hear, hear*). So, it is not only the inherent qualities of women but more particularly I should say the qualities of our men that is responsible for the fact that in our country, there has never been any strife between men and women.

When the Hindu Law Reform Bills were put in the Central Assembly, women were naturally anxious that these bills which conceded certain rights to them should be adopted, but we found an opposition which was not so great in numerical strength but which was very formidable because of the fact that it was from a reactionary group who were the erstwhile supporters of the then Government and who were also betraying the country at every turn. The alien Government could not afford to displease them, and unless we too were willing to barter away our souls and our birthright, we could not fight that opposition.

Sir, what we have upheld so long has come to pass today. We always held that when the men who have fought and struggled for their country's freedom came to power, the rights and liberties of women too would be guaranteed. We already see the evidence of this today. No reservation of seats was required to induce the men who are today in power to select a woman as Ambassador, the second in the history of any nation. Vijayalakshmi Pandit has not been selected because she is a woman nor was sex made a bar to the appointment. It is her proven worth that has been responsible for her appointment to the high office of ambassador to a land which is admittedly one of the greatest forces in the world today. This has vindicated our position and women are indeed proud of this. I am confident that it will not be only women of exceptional ability who in future will be called upon to occupy positions of responsibility, but all women who are equally capable, equally able as men will be considered irrespective of sex.

In the Legislatures of India, we have some women, but there are few women who have come from general constituencies. I think that the psychological factor comes into play when there is reservation of seats for women. When there is reservation of seats for women, the question of their consideration for general seats, however competent they may be, does not usually arise. We feel that women will get more chances in the future to come forward and work in the free India, if the consideration is of ability alone.

With these words, Sir, I should like to support this clause which has done away once and for all with reservation of seats for women, which we consider to be an impediment to our growth and an insult to our very intelligence and capacity.

Mr. Sarangdhar Das (Eastern States): Mr. President, Sir, I stand here to oppose the amendment of Mr. Lakshminarayan Sahu for creating an upper chamber in the Orissa Legislature in anticipation of the Rajas that is, the Rulers of Orissa, coming into the province at some future time. An upper chamber anywhere is an anachronism in these days of democracy. With adult franchise, when all the

[Mr. Sarangdhar Das]

legislation necessary, and all the safeguarding of interests necessary, are done in one chamber the members of which are elected by the whole people, there is no necessity for an upper chamber and as such I would request the Mover of this clause to see that there is no loop-hole left for the creation of an upper chamber in future, and particularly in Orissa. I represent here a group of small States in Orissa. At the same time, I am a member of the Orissa Legislative Assembly, and I know the feeling of the people of Orissa Province.

There is never any talk anywhere of an upper chamber and it will be disastrous to create one simply to perpetuate the vested interests of the Rajahs. So long, there had been this vested interest created by the British Government in India. But now, by creating an upper chamber in the province we shall be perpetuating that vested interest in another shape. I therefore strongly oppose this amendment and I hope the House will not in any way support this kind of reactionary measure.

Saiyid Muhammad Saadulla: Mr. Speaker, Sir, I hope this Honourable House would give me the indulgence to make a special plea for the smaller units of the Indian Federation and especially Assam. Assam was the Cindrella of all Indian Provinces till the Simon Reforms came into operation. Then she stepped up a bit and came over in the list of provinces from the bottom to three or four steps upwards, for smaller states than Assam came into existence like Orissa, Sind and North-West Frontier Provinces. But with the present set up and with the result of the referendum in the district of Sylhet of the Province of Assam she has again been relegated to the Cindrella Province of the Indian Federation. Conditions in Assam are not known to most of the Honourable Members of this House. Assam is a land of wide distances and very sparse population. In extent it was very nearly equal to the Province of Bengal as it existed three months ago, but in population it has only one sixth the population of Bengal. As has been stated earlier by two of my compatriots, we have very primitive and aboriginal people within our areas which were excluded from the Ministerial influence under the scheme of the Simon Reforms. But the then authorities took into consideration the undeveloped state of Assam and of our peoples, and gave us not merely the Provincial Legislative Assembly with a membership of 108 but also, in spite of the opposition of the peoples, an Upper Chamber was imposed on them. I am not concerned here with the Upper Chamber for Honourable Members will be glad to know that all the Members from Assam present in the Constituent Assembly have sent a joint letter to the Honourable the President expressing the views of Assam, not merely of the Congress and the Muslim League but the entire population of Assam, that we do not want any Second Chamber in the future constitution. When I say that Assam has 108 members when its population was only 92 lakhs in the 1931 census, I am not disclosing the fact that one third of Assam was unrepresented in this Legislative Assembly. For Assam has three frontier areas, the biggest one is called the Sadiya Frontier, the next one is the Balipara Frontier and the third is the Tirap Frontier. All these were excluded from the Reforms of 1935. One may say that these being Frontier areas they were right

to exclude it. But insular districts like the Naga Hills, the North Cachar Hills and the Lushai Hills also were excluded from participating in the Reforms of 1935. My plea before this August Assembly is that you will have to give your careful consideration if you want backward provinces, undeveloped provinces like Assam—I would not mention any others, because they may not think themselves backward—should be treated separately in the future constitution. I therefore have great pleasure in supporting the motion that has been placed before the House by my Honourable friends Sjt. Omeo Kumar Das and Rev. J. J. Nichols-Roy. Rev. Nichols-Roy has placed before the House the fact that a very large area called the North Cachar Hills with an area of 2,000 square miles but with a population of 37,000 wants to get representation in the future constitution of Assam. But he does not say what should be the limit of population which should entitle the area for representation in the Provincial Constitution. My Honourable friend Sjt. Omeo Kumar Das wants that the population basis should be reduced from one lakh to seventy-five thousand. Some speakers who spoke after I moved my own motion have misunderstood me. I do not want that the representation should be reduced. As a matter of fact I now openly make the plea that the smaller provinces should get a weightage as regards the number of people on the Provincial Legislature. What I wanted was just to place before the House my own humble opinion that there should be a maximum number fixed for such representation and I placed it at 300. One Honourable Member, I refer to my friend Mr. Sidhwa from Sind, fell foul of me and said that even in this House which consists of 228 members, we do not feel that this is unwieldy and that every one listens to the speeches with rapt attention. This is as it should be. For, this Constituent Assembly represents the *intelligentia*, the patriots, those who have sacrificed their all in the service of the country. No wonder, Sir, that we all listen so attentively and with rapt attention when we have men like Mr. Sidhwa who have to be given a place in this Constituent Assembly although under his physical domicile he was not entitled to sit in this House.

Mr. President: Mr. Kakkan wants to speak in Tamil. I do not know if many members will be able to understand Tamil.

Shri P. Kakkan (Madras: General): Mr. President, I want to speak in Tamil which is my mother tongue. If I speak in Tamil, I can express my ideas clearly. So, I want to speak in Tamil which is my mother tongue.

(The Honourable Member then spoke in Tamil)

Shri Raj Krushna Bose (Orissa: General): Sir, I would not have taken the time of the House and spoken on this motion had not one of my colleagues in the Provincial Legislature moved an amendment to the effect that Orissa may have an Upper House if the Orissa States will join the Province of Orissa.

In opposing the amendment, I should like to point out to the Mover that probably before giving notice of the amendment, he has not closely studied Clause 19 of the Provincial Constitution. Clause 19 (4) says: "In any province where the Legislature has an Upper House, the composition of the House shall be as follows": Then the procedure with regard to the composition has been enumerated. Then,

[Shri Raj Krushna Bose]

the note says: "It was agreed that the members of the Constituent Assembly from each Province should vote separately and decide whether an Upper House should be instituted for the Province." I should like to point out to my Honourable friend that if at all he desired to move the amendment, it would have been proper on his part to consult his colleagues here, who are members of the Orissa Legislature as to the effect the amendment would have on the province itself. I would not have opposed it if the effect would not be to commit the province to have an Upper House.

Evidently, Mr. Sahu's object in moving the amendment is to facilitate the Orissa States to join the Province of Orissa. If that is his object, let me tell him that they can do so even without an amendment like this, as this has been provided for in Clause 3 of the Draft Constitution of the Union whereby the States who want to merge themselves in the provinces can do so, and for this an Act of Parliament will be necessary. Clause 3 of the Draft Union Constitution says:

"The Parliament of the Federation may by Act, with the consent of the Legislature of every Province and the Legislature of every Indian State affected thereby,

(a) create a new unit;
(b) increase the area of any unit;
(c) diminish the area of any unit;
(d) alter the boundaries of any unit;

and may with the like consent make such incidental and consequential provisions as it may deem necessary or proper."

Sir, I do not know whether what Mr. Sahu contemplates is going to happen, or when or how it is going to happen, because I know attempts have been made by leading men of Orissa, not for a few months, but for the last few years for the amalgamation of the States of Orissa numbering as many as 26, with the Orissa Province but till now they could not be persuaded to do so. Supposing these attempts bear fruit and some or all the States agree to merge in the Province of Orissa, Clause 3 of the Draft Union Constitution contains a provision for such an union by an Act of Parliament of the Federation. In that case, the Legislature of every Indian State which is affected thereby will have to give their consent to such a union. I do not see any reason, Sir, when there is such a provision, in the Union Constitution, why Mr. Sahu chose to move this amendment. The amendment will, n effect, commit the province to create an Upper House where there no need for it. The amendment is therefore redundant. Another amendment which provides for the recall of members by the voters case such a situation arises has been moved by Mr. Sahu. He said hat in Switzerland such a provision exists. I am sure no such provision exists in Switzerland. If there are any, there are such provisions in some of the American States but in the present state of our country where democracy is but in its infancy, it would be improper to provide for such a thing and render the constituencies a battle ground between candidates unnecessarily and make them victims of rival political parties. I would therefore oppose both the amendments and would request him to withdraw both his amendments.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I have great pleasure in supporting Clause 19 as it is. At the same time I feel somewhat inclined favourably to the picture that has been

depicted by members from Assam where the problem of the hilliness, inaccessibility, sparseness of population and all similar physical difficulties have been pointed out. I am quite definite the amendment that has been moved to the effect that, instead of one lakh, two lakhs of people should send a representative should not be accepted by this Assembly. If anything, we should go in the other direction and make representation as broad-based as possible and reduce the figure one lakh to something less. I do not say it should be 35,000, or 10,000 or 50,000. I think we have to look to the practicability in the present set up. If we are going to be democratic at all, we should be as representative, make representation as broad-based as possible and we shall not be doing that by increasing the figure higher than one lakh. We have been given a good picture of the difficult and mountainous character of the Province of Assam. That is true, that is a feature which is characteristic of most of the Adibasi tracts throughout India. I come from the Chota Nagpur Plateau, Jharkhand, which is equally mountainous, equally inaccessible as some of the territories that have been described by my friend Mr. Gopinath Bardoloi from Assam Unless the delimitation of the constituencies is done on a much smaller population basis, it will simply mean that elections will have no strong appeal to the people. It would be difficult for the people whose votes we want and whose opinions we seek, to be interested. Sir Muhammad Saadullah, in his amendment, pointed out that he did not want that any House should be too unweildy. He gave us a figure which he wanted not to be exceeded. That is all very well but Mr. President, I have been reading, I have been hearing a great deal from the agents of the Indian National Congress, expressions about a re-distribution, a re-alignment of provinces on a cultural and linguistic basis. There is the famous Karachi Minority Resolution, 16 years old and, recently, we have had vociferous demands from various areas such as Andhra, Kerala, Karnataka, Maharashtra, Mahakoshal, Mithila and Jharkhand. I do not know whether I have left out any but there are these areas which have been demanding that there should be a re-alignment of the present unweildy and unnatural provinces. Well, I do hope that there will be a re-alignment, that the Indian National Congress will honour its word, honour the Karachi Minority Resolution and set about it quickly to get this dream realized. In that case, I think, arithmetically, Sir Muhammad Saadulla's fears will disappear altogether. Then on the basis of one per lakh the representation will never exceed the figure he has mentioned.

Sir, I fell in rather an awkward position in regard to the point that *Padre* Nichols-Roy has raised. Being a tribal myself, realizing that Adibasis must get effective representation in the future democracy of this country, I find myself confronted with a problem of there being something like 177 listed tribes in the decennial census of 1941. Now if we were to accept that, every pocket of the tribe should be represented—this is roughly the picture *Padre* Nichols-Roy has given us; he has mentioned a figure, that figure is meant to include particular pockets of the Assam tribes, now, if we are to work on that basis, *I am afraid even a figure as low as a thousand, if one thousand people were to send representatives, it would mean that somebody will be left out.* I think we have to draw the line somewhere and for the present

[Mr. Jaipal Singh]

I do feel that the figure that the Honourable Mover has stated in his clause as it stands *i.e.*, one per lakh of population, is good enough and I have great pleasure in supporting it.

Mr. Khandubhai K. Desai: Sir, I move that the question may now be put.

Mr. President: Closure has been moved. Now I ask the Mover of the Resolution to reply to the debate.

The Honourable Sardar Vallabhbhai Patel: Sir, several amendments have been moved and in the course of the discussion, some amendments have been opposed by some speakers. The sum total of the discussion results in an impression on me that there are two amendments which may be accepted. One is from Mr. Sidhwa which provides for the minimum number in Clause 2 to be raised from 50 to 60. Another amendment is from Sir Saadulla which provides for the maximum number to be fixed at 300. Except for these two amendments which I propose to accept, the rest, I would like to oppose.

There is an amendment moved by a friend from Orissa suggesting that there should be an Upper House in that province. I do not think that any amendment is necessary for that, because, in the Resolution itself it has been provided that it is the option of the province to have an Upper House or not. He will, of course have his say in that Provincial Assembly. He wants an amendment here, probably because he is afraid of not succeeding in that Provincial Assembly. But we do not propose to impose an Upper House on a province against its own will. Of course, there is no Upper House in the Province of Orissa to-day, and I see that this proposal to have one has been opposed by another friend from Orissa in this very House. Probably there is no chance of his succeeding in that attempt. I do not see why we should accept it.

He has moved another amendment in which he suggests that power should be given in the constitution to the voters to recall a member who has lost the confidence of his constituency. I do not see why such a provision should be made. I think it should be left to the honour of the member elected. When he feels that he has lost the confidence of his constituency, he must resign of his own accord, instead of having to be called upon to do so, and having a provision to that effect made in the constitution. A wise member will always keep his finger on the pulse of his constituency and I think instead of putting in such a provision, we should try to develop a healthy sense of responsibility and sense of honour in the members. If there are any stray instances or some black-sheep who having lost the confidence of their constituency still want to continue to represent that constituency in the House, for some such bad instances we should not disfigure our Constitution. We should leave it as it is, to the good sense of the members concerned.

Then, it has been suggested by some friend from Assam who seems to have developed a sense of inferiority complex, that Assam must always have some special treatment. It is a matter for congratulation that women have come forward to say that they do not want any special treatment. But at the same time, it is a matter of regret

that men have not yet come up to that standard. Let us hope that nothing will be provided in this constitution which would make exception in favour of men where women object.

It has been said that for tribal areas or for some such areas, some concession should be made in the matter of representation. In the first instance I would suggest that this is a matter which would primarily be considered by the special committee appointed for that purpose. We have not yet got the report of the Tribal and Excluded Areas Sub-Committee and we would not like to hamper their work or their discretion. We will not encroach upon their rights to make a free and unfettered report. I, therefore, suggest that we should not take this point into consideration now, but that the general principle as enunciated in this clause be accepted. If it is seen that after the report of this Sub-Committee is received, this clause requires some modification, that will be incorporated in the clause.

I do not think there is much that I should say now. We have had a full discussion for more than two hours and many arguments that were advanced have been replied to by contrary arguments. Therefore, I now move the clause for the acceptance of the House, with the two amendments I have referred to.

Saiyid Muhammad Saadulla: Sir, I beg leave to withdraw my first amendment.*

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

Shriyut Omeo Kumar Das: Sir, I beg leave to withdraw my amendment also.

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

Mr. President: Now we come to the second amendment moved by Sir Saadulla:

"That in sub-clause (2) of Clause 19, after the words 'any Province,' the words 'and a maximum of 300' be inserted."

This, I understand, has been accepted by the Mover, but must be accepted by the House also.

The amendment was adopted.

Mr. President: Then there is the amendment moved by Mr. Sidhwa:

"That in sub-clause (2) of Clause 19, the figure '60' be substituted for the figure '50'."

This amendment also, I understand, has been accepted by the Mover, but it has to be accepted by the House also.

The amendment was adopted.

Mr. President: Then there is the amendment moved by Rev. Nichols-Roy:

"That the following proviso be added to sub-clause (2) of Clause 19:

'Provided that in giving representation to any territorial area or areas inhabited by hill tribes, the Provincial Government may determine a lower basis of population than one lakh, and the total representation of the Province shall be increased accordingly'."

*That in sub-clause (2) of Clause 19 for the word "lakh" the words "2 lakhs" be substituted.

Shri K. Santhanam (Madras: General): On a point of order, Sir, this is a matter which should be referred to the Advisory Committee.

Mr. President: I think it is too late now. The amendment has been moved here and discussed. I take it that if the Advisory Committee has to make any suggestions on this point, it will be taken into consideration by the House.

The Honourable Rev. J. J. M. Nichols-Roy: Sir, as the Honourable Mover Sardar Patel, says that this question will be considered by the Advisory Sub-Committee now dealing with the Excluded and Partially Excluded Areas, and that the recommendations of that Sub-Committee will be discussed by this House, and that this clause will be subject to the recommendations of that Sub-Committee, I do not see any necessity to press my amendment. I want to withdraw it.

Mr. President: I think this matter will be considered by the Advisory Committee and its recommendations will come up before this House. I take it that the House permits Mr. Nichols-Roy to withdraw his amendment.

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

Mr. President: There are two amendments by Mr. Lakshminarayan Sahu. Does the Honourable Member desire to press them?

Mr. Lakshminarayan Sahu: Sir, I desire to withdraw both of them.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: I shall now put the clause as amended to vote. I suppose it is not necessary for me to read out the clause as amended.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I oppose the whole clause and in this connection I want to give expression to some of my views. Will you permit me to do that?

Mr. President: We have already had a long discussion on the clause and the amendments thereon.

Maulana Hasrat Mohani: Certain misunderstandings have been created about my political views by Sardar Patel and Pandit Nehru. I had no occasion to remove those misunderstandings. If you would allow me only a few minutes I shall express those views.

Mr. President: I am afraid it is too late to have any further discussion. If the Maulana had been listening to the speeches and not talking to other members he would have had his opportunity.

Maulana Hasrat Mohani: Sir, I oppose the whole resolution and this report altogether and I want it to go on record that I oppose the whole thing at this stage when you put the amended proposition to the vote of the House.

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

The question is:

"That Clause 19, as amended, be passed."

The motion was adopted.

The Honourable Sardar Vallabhbhai Patel: Sir, I move Clause 20:

"The provisions for the meeting, prorogation and dissolution of the Provincial Legislature, the relations between the two Houses (where there are two Houses), the mode of voting, the privileges of members, disqualification for membership, parliamentary procedure, including procedure in financial matters, etc., shall be on the lines of the corresponding provisions in the Act of 1935."

I understand that Sir Alladi Krishnaswami Ayyar is going to move an amendment to the last line, *viz.* "on the lines of the corresponding provisions in the Act of 1935." Instead of this he suggests a better form which is wider and is on the lines of the procedure in the British Parliament I will accept the amendment when he moves it. Otherwise this clause is a simple one and I move it for the acceptance of the House.

(Prof. Shibbanlal Saksena did not move his amendment.)

Sir Alladi Krishnaswami Ayyar: Sir, I have an amendment to the clause as proposed. It contains two parts. With regard to the first part of it there was some difference of opinion in certain quarters as to whether it should be pressed at this stage and whether it could not be taken up at a later stage. On that ground for the present I am not insisting upon it, though I think there is a good deal to be said in regard to that of it. The first part of it is:

"That at the end Clause 20 the following be added (with the following changes in the provisions of Section 71 of the Government of India Act, 1935):

'After the words 'in respect of the publication by or under the authority of a Chamber of such a Legislature' in sub-section (1) of Section 71, add 'or any accurate reports of such proceedings'.'"

I believe there is a necessity for some such provision but as it is felt in certain quarters that that part of it requires further examination I am not pressing it now. I propose to reiterate it at a later stage of the proceedings.

The second part of my amendment is:

"For sub-sections (3) and (4) of Section 71 of the Government of India Act, 1935, substitute the following:

'The powers, privileges and immunities of the members of the Legislature of the Province shall be such as are declared by the Provincial Legislature and until so declared shall be those of the members of Commons of the House of Parliament of the United Kingdom and of its members and committees at the establishment of this Constitution'."

If you will refer, Sir, to section 71 you will notice that the privileges are very restricted. The Legislature has no power to punish its own members and there are various other restrictions too. It was felt, as indicated herein, that our Legislature should possess as plenary powers as those possessed by the House of Commons without prejudice to the Legislatures themselves later on making their own provisions. That is the object of this amendment. If there is any feeling that in an Independent India's Constitution there need not be any reference to the House of Commons, later on we might collect all the materials with reference to the privileges of the House of Commons and they might be substituted. For the present I would press this, because the House of Commons is the Assembly, which has the widest privileges of all the Assemblies of the world.....

Mr. Naziruddin Ahmad: Sir, on a point of order, an Honourable Member is smoking in this House while the deliberations are going on. Is it in order to do so? If this is permitted, there will be many more Honourable Members who might claim the indulgence of smoking inside the Chamber.

Mr. President: It would not be in keeping with the dignity of this House or in keeping with our own past traditions that any Honourable Member should smoke in this House.

Sir Alladi Krishnaswami Ayyar: Sir, I also move:

"That the following new clause be inserted after Clause 20 (*That is a very material provision*):

'20-A. (1) the validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers'."

That is a very salutary and necessary provision, because it ought not to be open to any individual to challenge the validity of any enactment on the ground that any particular rule or order has not been observed in the passage of a particular enactment. That is a provision which has found a place in every Government of India Act. It is a very salutary provision. I would therefore request the House to accept this amendment the reason for which I have explained.

Mr. President: There is no other amendment. So the original proposition and the amendments are open for discussion. Anybody who wishes to speak either on the resolution or the amendments is free to do so.

(No member rose to speak.)

I find that no one is anxious to speak. I shall therefore ask the Honourable the Mover to reply.

The Honourable Sardar Vallabhbhai Patel: Sir, I accept the amendments.

Mr. President: I have to put the amendments, which have been accepted by the Mover, to vote first. I shall put the first amendment of Sir Alladi Krishnaswami Ayyar as it has been actually moved.

The question is:

"That at the end of Clause 20, the following be added (with the following changes in the provisions of Section 71 of the Government of India Act, 1935):

'For sub-sections (3) and (4) of Section 71 of the Government of India Act, 1935, substitute the following:

"The powers, privileges and immunities of the members of the Legislature of the Province shall be such as are declared by the Provincial Legislature and until so declared shall be those of the members of Commons of the House of Parliament of the United Kingdom and of its members and committees at the establishment of this Constitution".' "

The motion was adopted.

Mr. President: I shall put Sir Alladi Krishnaswami Ayyar's next amendment.

The question is:

"That the following new clause be inserted after Clause 20:

'20-A. (1) the validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers'."

The motion was adopted.

Mr. President: The question is

"That the clause, as amended by these two amendments, be passed."

Clause 20, as amended, was adopted.

Mr. President: We now come to Clause 21.

CLAUSE 21

The Honourable Sardar Vallabhbhai Patel: I ask permission that Clause 21 may stand over for the present because there is a similar provision in Clause 16 of the Union Constitution and both may be considered together. There being two similar provisions in two constitutions, and this being a controversial matter, there is likely to be some confusion and I therefore suggest that this may be kept over and both considered together.

Mr. President: Clause 21 stands over for consideration at a later time. We come to Clause 22.

CLAUSE 22

The Honourable Sardar Vallabhbhai Patel: Sir, I move:

"The Provincial Legislature may from time to time make provisions with respect to all or any of the following matters, that is to say,—

(a) the delimitation of territorial constituencies;

(b) the qualifications for the franchise and the preparation of electoral rolls;

(c) the qualifications for being elected as a member of either House;

(d) the filling of casual vacancies in either House;

(e) the conduct of elections under this Constitution and the methods of voting thereat;

(f) the expenses of candidates at such elections;

(g) corrupt practices and other offences at or in connection with such elections;

(h) the decision of doubts and disputes arising out of or in connection with such elections;

(i) matters ancillary to any such matter as aforesaid:

Provided

(1) that no member of the Lower House shall be less than 25 years of age and no member of the Upper House shall be less than 35 years of age;

(2) that the superintendence, direction, and control of elections, including the appointment of election tribunals shall be vested in the Governor acting in his discretion."

Probably there will be a motion for deletion of Proviso (2) which I will accept because other provision has been made for it. Sir, I move this proposition for the acceptance of the House.

Sri K. Santhanam: Sir, I move:

"That in Clause 22 after the words 'from time to time' the following be inserted:

'in accordance with the procedure for amending the Provincial Constitution'."

As the clause now stands, by a mere ordinary law such important matters as the delimination of territorial constituencies and the qualifications for the franchise and the preparation of electoral rolls can be altered. It will mean that by a snatch vote a simple majority can upset the entire basis of the Provincial Constitution; it can gerrymander constituencies and make changes so that it can dissolve the House and come back to power in a larger majority. Therefore some restrictions are needed. I suggest these changes should be made, only in accordance with the procedure for amending the Provincial Constitution. That procedure for amending the Provincial Constitution has not been laid down in the present Report, but I have tabled a clause for that purpose. The procedure may contain various provisions. Certain parts of the Provincial Constitution may be changed by one procedure and certain other parts may require a more elaborate procedure. Whatever that may be, these matters should be changed only by the procedure specially prescribed in that behalf. They should not be changed by ordinary legislation. I hope therefore that this amendment will be accepted by the House.

(Dr. P. S. Deshmukh did not move his amendment)

Sri K. Santhanam: Sir, I move:

"That in item (b) of Clause 22, for the words 'the qualifications for franchise' the following be substituted:

'Limitations to adult franchise on grounds of non-residence of personal disabilities not based on birth, race, religion, or community'."

Sir, adult franchise is the basis of the whole scheme. My amendment simply makes it clear that the qualification for the franchise does not mean any power to bestow this on any one. Even for adults there may be some qualification necessary especially on grounds of residence and there may be personal disabilities like insanity or life in prison and all that. I want to provide that apart from these there should be no restriction on adult franchise.

(Messrs. Gokulbhai D. Bhatt and V. C. Kesava Rao did not move their amendments.)

Mr. President: I understand that the Mover of the Resolution is in favour of accepting the motion of Mr. Khurshed Lal to delete the second proviso to Clause 22. Would someone else move it in the absence of Mr. Khurshed Lal?

Mr. K. M. Munshi (Bombay: General): With your permission I shall move it, Sir. I move the amendment to delete the second proviso to Clause 22. The reason for its deletion is that in the Union Constitution Committee's Report there is going to be provision to set up an All-India Election Tribunal which will have the power of superintendence, direction and control of all elections not only Federal, but also Provincial. Therefore there is no need to give this power to the Governor to act in his discretion.

(Messrs. Kala Venkata Rao and K. Santhanam did not move their amendments.)

Mr. H. V. Kamath: My amendment suggesting a new proviso to Clause 22 seeks to take this vital issue of separate electorate and weightage out of the purview and jurisdiction of Provincial Legislatures. But I am told that the Report of the Advisory Committee on Minorities is dealing with this and other cognate matters. Therefore until their report is taken into consideration there is no point in moving my amendment. I *do not therefore press it. It runs as follows:*

"That the following be inserted as proviso (3) to Clause 22:

'that no Provincial Legislature shall at any time make provision for separate electorates or for weightage to any particular class or community in the Provincial Legislature and other elective bodies of the Province'."

(Shri T. A. Ramalingam Chettiyar and Shri Kala Venkata Rao did not move their amendments.)

(Prof. Shibbanlal Saksena did not move his amendment.)

Seth Govind Das (C. P. and Berar: General): *[Sir, there are two amendments in my name. One is number 4 and the other No. 5 in the Supplementary List No. 3. I am not moving No. 4. I want to move No. 5 which runs:

"That after proviso (2) in Clause 22 the following new proviso be added:

'(3) that all provisions under Clause 22(a) to (i) will be made on the principles of and in conformity with the instructions laid down in the Schedule annexed hereto so as to maintain uniformity in these matters throughout the Indian Union'."

I feel there is no need to say much about it. I only wish that all the items from (a) to (i) given in this clause should be uniformly applied throughout India. When India as a whole is going to be one Union, the application of these clauses for one province in one way and for another in a different way, would not be proper. That is why I have submitted this amendment and I hope that Sardar Patel will accept it.]*

[ ] English translation of Hindustani speech.

Mr. President: There are two amendments by Mr. Kala Venkata Rao. (There was no reply). All the amendments have been moved. Those who wish to speak either on the resolution or on the amendments may do so now.

The Honourable Sir N. Gopalaswami Ayyangar: Mr. President, I wish to say a few words on the first amendment that was moved by Mr. Santhanam. I find some difficulty in fitting it in. His proposal is that in Clause 22 after the words "from time to time" the following words be inserted: "in accordance with the procedure for amending the Provincial Constitution". There is a good deal of substance in what he said on the merits of the amendment itself. Apparently, his scheme is that the first provisions which are to be enacted in connection with the matters mentioned in the clause should find a place in the constitution itself, either in the body of the constitution or in the schedules to the constitution. If these schedules are framed, then you can give the provincial legislature power to amend these schedules. He apparently wants to safeguard against amendments being carried out in haste or perhaps in pursuance of ideas which may have had sway for the time being but perhaps would not be quite acceptable in the long run. So he wants to provide that amendments to such schedules to the constitution should be made by the provincial legislature only according to the procedure prescribed for amending the provincial constitution. I can understand that. But what this clause says is that the first laws relating to these matters are to be made by the provincial legislature. "The provincial legislature may from time to time make provisions with respect to all or any of the following matters." If you allow the provincial legislature to make the first provisions in regard to these matters without placing, I take it, any particular restrictions on its powers, it does not stand to reason that you should provide that amendments to such provisions should be made only according to the procedure prescribed for amending the constitution. I think, Sir, that this clause will have to be redrafted in order to carry out his purpose. We can say that the first provisions with regard to these matters should find a place in the schedules to the constitution and then you can give powers to the provincial legislature to amend these schedules according to the procedure prescribed for amending the provincial constitution.

There is also another difficulty. I believe the draft Model Constitution does not provide for any procedure for amending the Provincial Constitution. That also we may have to provide for. I would suggest that so far as Mr. Santhanam's amendment is concerned, we hold it over so that we may produce a draft which will carry out the purpose Mr. Santhanam has in view. I feel that the amendment as moved by him should not for the present be accepted but that we should take it up later on.

Sir Alladi Krishnaswami Ayyar: Sir, I support the suggestion of Sir Gopalaswami Ayyangar that the consideration of this clause

might lie over. If the first delimitation of constituencies is by ordinary law, it stands to reason that the later changes also may be by ordinary law, but on the other hand if the delimitation of constituencies is provided in the constitution, later amendments will be constitutional amendments. Therefore if in the schedule you indicate how exactly the constituencies are to be delimited then of course provision will be necessary that later changes will be by constitutional amendments. Under the circumstances, I would request Mr. Santhanam not to press his amendment at this stage.

Sri M. Ananthasayanam Ayyangar (Madras: General): I do not find any insurmountable difficulty for which my friends there are trying to find a solution. The existing legislature will continue to function even after the constitution comes into force under the transitional provisions contained in Part IV. Otherwise immediately on the constitution coming into force it will not be possible to allocate the territorial constituencies and allow elections to take place. In the meanwhile demarcation of territorial constituencies will have to be made through the legislature in existence. The present legislature will continue under Clause 2 of Part IV. "There should be similiar provisions, *mutatis mutandis*, in respect of the Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House)." The previous provision is: "Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the province under this Constitution until a successor, duly elected under this constitution, assumes office." Therefore the legislature will continue and that legislature can be entrusted with the duty of delimiting constituencies. Mr. Santhanam's amendment may be accepted without any difficulty about the initial delimitation of constituencies. That can be safely entrusted to the legislature.

Mr. President: Does any other member wish to speak on the resolution or the amendment?

Mr. M. S. Aney (Deccan States): I would like to speak on the second amendment of Mr. Santhanam.

Mr. President: It is 6 o'clock and if there is any long discussion, we might adjourn. I would like to know whether there are any other members who want to speak.

Some Honourable Members: Yes.

Mr. President: Then, before we adjourn, I would like to make one or two announcements. This morning's newspapers published the news that the aeroplane in which one of our Honourable Members, Mr. Jagjivan Ram and his two secretaries were travelling crashed near Basra. I am glad to be able to inform Honourable Members that the injury which Mr. Jagjivan Ram has sustained is not of a very serious character, although I understand there has been a fracture of one of the knee caps. I am told it will not take very long for him to recover. Let us hope that he will be able to come back soon and participate in our deliberation.

[Mr. President]

It was represented to me by some members that they would like to have a little more time for sending in amendments to the Union Constitution Committee's report and as we have not finished the consideration of the Provincial Constitution, I am prepared to give a little more time for them to send in their amendments, say, by tomorrow evening 2 o'clock so that the amendments could be printed and circulated before Monday 2 P.M.

There is one another announcement. From Monday next I propose that we sit at 10 o'clock and go up to 1 P.M. We shall now adjourn.

Mr. K. M. Munshi: The Minorities Sub-Committee would meet on Monday. 10 o'clock was the time announced.

Mr. President: It has been represented to me by several members that while this House is sitting it will be most inconvenient for the members who are members also of the Minorities Sub-Committee to be sitting and they would not find time to devote to both the sessions which will have to be held from day to day. This meeting of the Minorities Sub-Committee has already been announced, but in view of this representation, I should like to postpone it for some days and would fix another date which will suit all the members. The exact date will be announced after consulting the convenience of all the members.

The Honourable Sardar Vallabhbhai Patel: If the Minorities Sub-Committee meeting is postponed, the Advisory Committee's report and everything else will have to be postponed. They should be allowed to adjust their time and have their meetings in the afternoon.

Mr. President: I understand that other members have got engagements in the afternoon. It will be very difficult for the members to attend. In any case we cannot have it on Monday at Ten. We shall fix some other date. The Minorities Committee will have to sit in the afternoon.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): May I know why 10 o'clock is fixed?

Mr. President: For various reasons to suit the convenience of Members.

The Honourable Pandit Jawaharlal Nehru: It is neither here nor there—either earlier or later.

Mr. President: I thought that most of the members considered it convenient.

We shall announce another time for the meeting of the Minorities Sub-Committee. Then we meet on Monday at 10 o'clock.

The Assembly then adjourned till Ten of the Clock, on Monday the 21st July, 1947.

APPENDIX

CONSTITUENT ASSEMBLY OF INDIA

Report of the ad hoc *Committee* on Clause* 8 *of Part I of the Provincial Constitution*

The Committee recommends that—

Clause 8 be re-drafted so as to read:

"It shall be competent for a Province, with the previous sanction of the Federal Government, to undertake, by an agreement made in that behalf with any Indian State, any legislative, executive or judicial functions vested in that State, provided that the agreement relates to a subject included in the Provincial or Concurrent Legislative List.

On such an agreement being concluded, the Province may, subject to the terms thereof exercise the legislative, executive or judicial functions specified therein through the appropriate authorities of the Province."

Signed on behalf of the Committee.

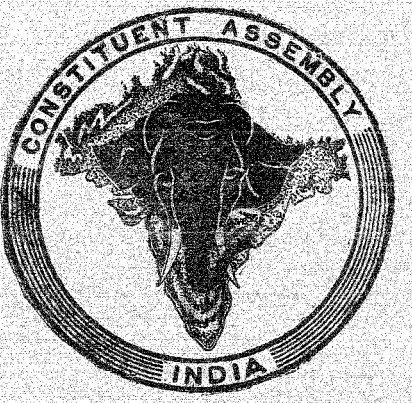
B. L. MITTER,
Chairman

NEW DELHI:
July 17, 1947.

**Members of Committee*:

1. Sir B. L. Mitter (*Chairman*).
2. Sir Alladi Krishnaswami Ayyar
3. Mr. Ismail Chundrigar.
4. Sir A. Ramaswami Mudaliar.
5. Dr. B. R. Ambedkar.
6. Mr. K. M. Munshi.

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Volume IV
No. 6

Monday
21st July
1947

CONSTITUENT ASSEMBLY DEBATES

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CONSTITUENT ASSEMBLY OF INDIA
Monday, the 21st July 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

Mr. President: I understand there are three members who have not yet signed the Register who are present today. They may please sign.

The following members presented their Credentials and signed the Register:

1. Dr. H. C. Mookerjee (West Bengal: General).
2. Mr. F. R. Anthony (C. P. & Berar: General).
3. Kumararaja Sir M. A. Muthiah Chettiyar (Madras: General).

CONDOLENCE OVER THE ASSASSINATION OF GEN. AUNG SAN AND HIS COLLEAGUES IN BURMA

Mr. President: Honourable Members received with the greatest grief the sad news of the tragic circumstances in which General Aung San and his colleagues lost their lives as a result of a dastardly outrage the day before yesterday. The news must have shocked Indians particularly because our relations with Burma have been of a very friendly character even after Burma was separated. General Aung San was one of those men who had brought Burma to the door of independence and that he should lose his life and that his colleagues should lose their lives at the hands of their own countrymen is tragic beyond words.

I do not know when the world will come to realise that violence, and violence particularly of this type can never solve any problem of the world. If this outrage is any indication of a deep-laid plot, Burma is in, I would fear, for very difficult times. But we have hopes that the Government there which has been brought into power with the overwhelming support of the people will be able to control the situation and that the people of Burma will be able to enjoy the fruits of that independence which those who have lost their lives have just won for her.

I hope the House will permit me to convey our sense of sorrow and our condolences to the people of Burma, to the members of the Government there as also to the members of the bereaved families. I

[Mr. President]

hope Honourable members will express their assent by standing in their places.

The Assembly assented, the members standing in their places.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States):

[Mr. President, with your permission, I would like to ask one or two questions. For how many days more will this Session of the Assembly continue? Are we going to meet again in August? I wish to know it in order to facilitate my programme.]

Mr. President: *[I hope that the Assembly will conclude its session within this month, as we have before us one more report of another Committee to consider after we finish the report of this Committee. When the Assembly finishes discussions over that report, the great task before us, requiring a major portion of our time, would have finished. Besides that, one or two resolutions are also expected. I hope they will not take a long time. Hence I think that the business of this sitting would be finished by the end of this month. It is possible that the members may have to come again on the 15th August.]*

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION—*Contd.*

CLAUSE 22

Mr. President: We shall now take up the discussion of the clause that we were discussing that day. The amendments have been moved and the motion as well as the amendments are open to discussion.

I would like to know if there is any other amendment of which notice has been given, which had not been moved. My own impression is that all amendments have been moved.

Mr. Aney, you wanted to speak on this?

Mr. M. S. Aney (Deccan States): Mr. President, Sir, I only wanted to make one observation with regard to the second amendment moved by Mr. Santhanam to Clause 22 that it was, in my opinion a superfluous amendment. He wants to make sure that any rules that may be made will not infringe the primary principle which has been already provided for *viz.*, adult franchise, but I believe it is a well known principle that under the rule-making powers those who have to frame the rule have to see that nothing is introduced into the rules which is inconsistent with the principles already embodied in the Statute itself. In view of that and in view of the fact that adult suffrage has already been provided for by a distinct provision in the Statute the second amendment which he has proposed appears to me to be unnecessary.

[ ] English translation of Hindustani speech.

Shri K. Santhanam (Madras: General): With regard to the objection raised by Sir N. Gopalaswamy Ayyangar, I have given notice of an amendment which may also be taken up with this. It is in the new supplementary list. I would like to state that no provision has been made for the first election. Unless something is made, that clause is difficult to apply and so I have tabled an amendment as follows:

"That the following be inserted at the beginning of Clause 22:

'For the first election to the Provincial Legislasure under this Constitution, the constituencies, qualifications of voters and other particulars shall be such as may be prescribed, in the Schedule to this Constitution.' "

Then the clause will run as given and then my amendments will come. I move this amendment as I do not think there is any point to be cleared about it.

Mr. President: Does anyone wish to speak about the clause or any of the amendments that have been moved?

I will put the amendments to vote.

This is Mr. Santhanam's amendment:

"That the following be inserted at the beginning of Clause 22:

'For the first election to the Provincial Legislasure under this Constitution, the constituencies, qualifications of voters and other particulars shall be such as may be prescribed, in the Schedule to this Constitution.' "

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): I accept Mr. Santhanam's as well as Seth Govind Das's amendment.

Mr. President: I put Mr. Santhanam's amendment to vote.

The amendment was adopted.

Mr. President: Mr. Santhanam's second amendment is as follows:

"That in Clause 22 after the words 'from time to time' the following be inserted:

'in accordance with the procedure for amendment the Provincial Constitution'."

The amendment was adopted.

Mr. President: There is another amendment by Mr. Santhanam as follows:

"That in item (b) of Clause 22, for the words 'the qualifications for the franchise' the following be substituted:

'limitations to adult franchise on grounds of non-residence or personal disabilities not based on birth, race, religion or community.' "

The amendment was adopted.

Mr. President: There is another amendment moved by Mr. Munshi as follows:

"That the second proviso to Clause 22 be deleted."

The amendment was adopted.

Mr. President: There is another amendment moved by Seth Govind Das as follows:

"That after proviso (2) in Clause 22, the following new proviso be added:

'(3) that all provisions under Clause 22(a) to (i) will be made on the principles and in conformity with the instructions laid down in the schedule annexed hereto as to maintain uniformity in these matters throughout the Indian Union.' "

The amendment was adopted.

Mr. President: Now I put the clause, as amended to vote.

Clause 22, as amended, was adopted.

CLAUSE 23

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move Clause 23:

"(1) If at any time when the Provincial Legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this clause shall have the force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Provincial Legislature, or, if before the expiration of that period resolutions disapproving it are passed by the Legislature, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the Governor.

(3) If and in so far as an ordinance under this clause makes any provision which the Provincial Legislature would not under this Constitution be competent to enact, it shall be void."

Ordinance making power has been subjected to much criticism; but by long experience it has been found that it is necessary to have such provision in the case of an emergency when the Legislature is not sitting and there is not enough time to call the Legislature and there is immediate necessity of passing an urgent legislation.

I do not think there are many amendments to this clause. I move this proposition for the acceptance of the House.

(Messrs. Ajit Prasad Jain, H. V. Pataskar, R. K. Sidhwa, Shibbanlal Saksena and M. Ananthasayanam Ayyangar did not move their amendments.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I beg to move that the following new clause be added after Clause 23:

"24. All matters incidental to or consequential upon the Clauses above shall be deemed to be part of, and included in the said clauses."

Sir, my object in moving this amendment is to remove all technical difficulties that may arise at the time of the drafting of the final bill. We have accepted in this House a large number of amendments to the original Report and it is just possible that there may be some gap or omission here and there, met with at the time of the final drafting. I therefore propose this amendment so as to remove any such technical difficulties.

Mr. President: Mr. Naziruddin, I think yours is not an amendment but the addition of a new clause. We had, I think, better dispose of Clause 23, and then go on to this new clause.

No amendment has been moved to this clause, Clause 23. If any member wishes to speak about it, he can do so now.

(No member rose to speak.)

I shall now put the motion:

"23. (1) If at any time when the Provincial Legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this clause shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reasonably of the Provincial Legislature, or, if before the expiration of that period resolutions disapproving it are passed by the Legislature, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the Governor.

(3) If and in so far as an ordinance under this clause makes any provision which the Provincial Legislature would not under this Constitution be competent to enact, it shall be void."

The motion was adopted.

Mr. President: Mr. Naziruddin Ahmad will please move his clause.

Mr. Naziruddin Ahmad: Sir, I beg to move that the following new clause be added after Clause 23:

"24. All matters incidental to or consequential upon the clauses above shall be deemed to be part of, and included in, the said clauses."

Sir, I submit that this clause would be necessary to remove technical difficulties at the time of drafting. We have introduced some new amendments in this House, without perhaps much notice. It is therefore, just possible that there may be gaps here and there, I mean, unintentional gaps or technical difficulties. So at the time of drafting a point may arise that particular things, i.e. things incidental to certain amendments adopted here or consequential upon those amendments—are not meant to be included in the Report. It is for this reason that I have proposed this new clause. I do not know of any gaps, apparent gaps, just now, but all the same I have brought forward this clause so that if there is any gap or omission, then this clause may be helpful to the draftsmen. With these few words I submit it for the acceptance of this House.

Mr. President: A new clause, Clause 24, has been proposed to be added here. Personally I have not been able to quite understand the effect of this additional clause. If any member wishes to speak about it, I shall be obliged if he would enlighten me on it.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I do not think there is any need for such a new clause as this, because we are here only approving the general principles. Things ancillary, incidental, supplementary, consequential, etc., will naturally have to be added when the final drafting is done. The new clause now proposed is vague. With it, it is not enough to meet the situation; without it, we are none the worse of. In any case it need not be considered or voted upon now.

Mr. President: As there is no other speaker, I shall put the motion to the House.

The motion is that the following new clause be added after Clause 23:

"24. All matters incidental to or consequential upon the clauses above shall be deemed to be part of, and included in, the said clauses."

The motion was negatived.

Mr. President: There is notice of another additional clause by Mr. Santhanam. Will Mr. Santhanam please move it?

Shri K. Santhanam: Sir, I beg to move that after Clause 23 the following new clause be inserted:

"24. The Governor of a province in which the legislature consists of a single chamber shall have the right to return at his discretion a Bill passed by the legislature for reconsideration and may suggest amendments. If the Bill is passed again by the legislature with or without amendments by an absolute majority he shall assent to it."

This is an amendment of some substance. As things stand in the draft of the model constitution, if a legislature passes a law by a snatch vote or by a very narrow majority it will have to become law immediately because there is no power of veto or any other power vested in the Governor. Sir, I myself do not want any power of veto for the Governor; I want full autonomy and full responsible government in every province. But I want to give the Governor the power to send a Bill passed by the provincial Assembly for reconsideration. If after reconsideration the Assembly passes it by an absolute majority he will have no power of veto but will have to give his assent to it.

Sir, I have limited this power only to those provinces which will have unicameral legislatures because where there are two chambers the revisory function will belong to the Upper House. I have also vested this power in the Governor's discretion. Obviously a ministry which rushes a Bill through by a narrow majority will not care to advise reconsideration; and so it should be a power in the Governor's discretion.

Sir, I move.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, I am afraid this amendment cuts at the very root of the democratic principle which forms the basis of this constitution. What after all is Mr. Santhanam's point? It is that if in any province with a unicameral legislature a Bill is passed by a narrrow majority the Governor should be invested with additional powers—which are to be exercised by him in his discretion—to make suggestions to the legislature to reconsider the whole situation and then come to a decision. Now I ask the House to consider the result of such a procedure. In my opinion the inevitable result would be that the Governor would be antagonised and would straightaway come into conflict with the popular ministry which would be functioning. I do not see any necessity for it; on the other hand if any measure has been passed in inor-

dinate haste and without due consideration and discrimination, the legislature surely is not debarred from repealing it or amending it at subsequent sessions, if it is not the product of mature deliberation. So I feel that to invest the Governor with powers like this would be directly to trench upon the independence and responsibility of the legislature. It will unnecessarily bring the Governor into conflict with the ministry and I feel that the motion should not be supported.

Mr. N. V. Gadgil (Bombay: General): Sir, I desire to make a suggestion which need not be incorporated here and now but may be considered at the proper stage later on. I suggest that there should be a time-limit within which the Governor should send a Bill back with or without amendments, failing which it should be taken automatically that he has assented to the Bill. The American constitution contains this kind of provision and it should be embodied here.

Pandit Lakshmi Kanta Maitra: While laying down a time limit, does Mr. Gadgil accept the principle that the Governor will be in a position to reconsider the whole situation over the head of the legislature?

Shri M. Ananthasayanam Ayyangar: Sir, I consider this a very wholesome provision. I do not know why my friend Pandit Maitra has any doubt as to the intention of Mr. Gadgil in supporting this amendment. He accepts the principle and then says that there should be a time limit. In the American constitution a time limit of ten days is fixed. There must be a period witrin which the Governor must consider the matter and send it back for reconsideration of the House. After all a sufficient number of members might not have been present, there may be important matters involved relating to minorities and other matters where consideration at some greater length should have been bestowed on a Bill instead of its being rushed through. The Governor would have to be watchful at every stage; it is not as if he would actually try to interfere at every stage with a popular ministry. He will be on his guard; he will be the President of the Council of Ministers from time to time and will exercise a wholesome influence. If in spite of all this a situation suddenly arises where a particular section wants to rush a Bill through let him put his check upon that and send it for reconsideration of the legislature. There are similar provisions in the Government of India Act. I can assure my friend Pandit Maitra that a popular Governor would not try to interfere except in very special cases. I support the amendment.

Mr. Tajamul Husain (Bihar: Muslim): Sir, I rise to support the amendment. What would be the position if a Bill is sent for the assent of the Governor and he is not satisfied with the provisions of the Bill? Ordinarily a Governor who is elected on adult franchise will not interfere with any measure which is passed by the legislature. But in case he is not satisfied with the Bill, is he to sign it against his conscience? Or is he to send it back to the House with his amendments or make a total rejection? I think under the English constitution if a Bill passes through the House of Commons it goes to the

[Mr. Tajamul Husain]

House of Lords and is then sent to the King for his assent. In practice the King always assents though he has the right to reject a Bill in which case it goes back to the Houses of Parliament. If it passes again without any amendments and is again sent to the King for his assent he must sign it or he must abdicate. Similarly if the Governor is given power to refuse his consent or if he sends the Bill with his amendments it is for the provincial legislature to reconsider the Bill in the light of the Governor's suggestions. If they pass the Bill again in its original form the Governor must sign it or he must get out. Therefore I support the amendment that a chance must be given to the Governor and that he should not act merely as a figure-head.

Mr. Ramnarayan Singh (Bihar: General): Sir, I strongly support the amendment. We have provided in the constitution for an elected Governor and so I do not see why people should be so afraid of him that they do not want to give him any powers. From time to time it is necessary that the Governor should take the initiative and there will be no harm if any legislation is reconsidered. I appeal to the House to give some power to the Governor so that he may be of some use to society, otherwise it is better to get rid of the Governor altogether. Sir, I think this amendment should be accepted by the House.

The Honourable Mr. Hussain Imam (Bihar: General): Mr. President, I intervene in this debate in order that the practice might be established, when things of this nature are being discussed, of advising the Constituent Assembly on the practice all the world over. I regret, Sir, at this moment many of my colleagues have not before them Constitutions of the world. They have also probably not read the exhaustive notes which have been circulated by the staff of the Constituent Assembly at the instance of the Constitutional Adviser.

The practice in U. S. A., to give only one instance, is that the President has the power, in spite of there being dual chambers—the Senate and the House of Representatives—to veto a Bill but that that veto can be overridden if a majority of two-thirds of both Houses reject it. In addition to that, he has another veto, which is a pocket veto, by means of which he can disallow a Bill if it is passed within ten days of the sittings of the House. There are any number of instances to indicate what the world is doing. It will be very useful if the practice could be established of the Honourable the President getting the Constitutional Adviser to indicate, on such controversial issues, what the practice in other parts of the world is. No doubt the Constitutional Adviser has issued a book to us. It will be very useful to us. Still there is room for more information on world practice.

I think Mr. Santhanam's amendment is very essential. He has urged in this amendment that it will have effect only in those provinces in which the legislature consists of a single chamber. The Mover thinks that where there is a second chamber, it will act as a brake on the Lower House. But we know. Sir, that there is need for further

clarification where, if there is any difference between the two Houses, there are different methods of tackling it in different countries. In regard to Money Bills the practice in some places is that the Second Chamber is made *hors de combat.* It has no power. In regard to other Bills, in some of the Constitutions, the Second Chamber can vote finally. In other Constitutions, they have to sit together and come to a decision jointly, the Second Chamber's votes being usually overridden by the majorities in the Lower House. But what I was saying was that it is wrong on our part still to dream that we will be having Governors appointed by an outside authority. In future, the Governors will not be there to serve the cause of the powers-that-be. The Governor will be our man elected by adult franchise. It is therefore necessary that you must give him full trust and confidence. If you place your confidence in him and if you provide, as suggested by Mr. Santhanam, these checks and balances, you will arrive at a happy mean in which there will be one House ready to set right matters if the other goes wrong. This is the only method by which we can avoid pitfalls. I support the amendment.

Kumararaja Sir M. A. Muthiah Chettiyar (Madras: General): Sir, I am very glad that Mr. Santhanam has moved this amendment and that there is the prospect of the House accepting it. But my happiness is mitigated by the fact that the amendment is restricted in its application to Provinces where there is no second chamber.

Sir, the experience that we have of second chambers where they exist does not warrant the belief that they are a sufficient check against hasty legislation. In the last few years the Lower House has rushed through legislation with such haste that many mistakes have crept in and there have been many occasions when the leaders of the Lower House have requested the members of the Upper House to correct, and send back the Bill to the Lower House. All this will be avoided if the Lower House is given a chance to reconsider the matter.

There are many reasons necessitating this opportunity for reconsideration. Sir, on many occasions all the Standing Orders are suspended and legislative measures, published in the Gazette only the previous evening, are carried through the Legislature the next morning in the twinkling of an eye. They say that an emergency has arisen and that if the legislature does not pass the measure before it adjourns, the Governor would have to issue an Ordinance.

For these reasons I do suggest that we should go a step further and remove from the amendment the reference to single chambers so that this check may be there even in Provinces where there are two chambers.

With regard to the possible misuse of the power by the Governor, I am glad that my hon. friend Mr. Hussain Imam has pointed that the Governor is not going to be a stranger. He is going to be a provincial man or an Indian from another province. That being so, we may be

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expected to gauge public opinion. If in his opinion he feels that the legislature is rushing through a measure against public opinion, he may be expected to send back the measure for reconsideration. There may be occasions when legislators may not have time to study any piece of legislation brought before them and they will be only glad to get a chance to look at it once again. Press and public opinion in the country would play a great part in shaping the views of the Governor. If the Governor acts wrongly he will be told so by the Ministry and by public opinion. I do not think the Governor will misuse the power to send back legislative measures. I hope that the Mover and the leaders of the parties will find it possible to remove this reference to single chamber and provide for this check even in places where there are two chambers.

B. Pocker Sahib Bahadur (Madras: Muslim): I have great pleasure in supporting this amendment. At the same time I must express my dissent from the view of the previous speaker that this should be extended even to cases where there is a bicameral legislature. The Upper House is a sufficient check against hasty legislation. Therefore, in the Provinces in which there is an Upper House it is not necessary that this power should be given to the Governor. I support the amendment.

Mr. Naziruddin Ahmad: I beg to support the amendment. Sir, in the speeches delivered here in this connection, one aspect of the thing has not been mentioned. It is that in some cases legislation may be *ultra vires*, irregular or illegal in some respects. In such cases, the Minister who has sponsored such legislation may himself desire to reconsider the matter. A provision like this would give him an opportunity to reconsider his attitude when he finds that public opinion is against the measure. It is inconceivable that a Governor, under the new Constitution, would act in an improper manner. In the circumstances power like this may be very much desired by the Ministers themselves. I believe that a power like this exists in the Government of India Act of 1935, much of which has been copied in this Report. The Government of India Act of 1935 has now been admitted to be a model legislation. As I have already submitted the Governor should be given this power in provinces where there is no second chamber and he may be expected to act in a beneficial manner.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. President, the other day we accepted a clause empowering provinces to choose whether they would have a second chamber or not, implying thereby that this House would accept a second chamber in the case of those provinces who choose to have it. How could we deny in these circumstances the same restraining influence to provinces which choose to have only one chamber? Either you must allow provinces to have second chambers or you must allow that restraining influence to the Governors for remitting bills for reconsideration in the case of provinces

which select only one chamber. Sir, in the case of provinces which elect to have only one chamber, the Governor must have this restraining influence to check hasty legislation, and we cannot deny to such provinces a provision of this kind. This is consistent, logical and necessary. Therefore I support the amendment.

K. T. M. Ahmed Ibrahim Sahib Bahadur (Madras: Muslim): Mr. President, Sir, it is absolutely necessary for the Governor to have this power to prevent hasty legislation. I submit that this power is not inconsistent with democratic principles. In the Union Constitution, there is a provision to the effect that the President should have the power of returning bills which have been passed by the National Assembly for reconsideration within a period of six months. What the Union Constitution seeks to give to the President of the Nation must in justice be given to the Governors of provinces. There is nothing undemocratic about it.

Further, Sir, the Governors of provinces are invested with very great powers, and the Provincial Constitution Committee says that the Governors will not abuse those powers as they are elected Governors. Then, Sir, it is obvious that if the President of the Union who is elected by a limited franchise is given power to send back bills to the National Assembly for reconsideration, it is in the fitness of things that the Governors who are elected on adult franchise should be given the same power. I am therefore glad to support the amendment moved by Mr. Santhanam.

The Honourable Sardar Vallabhbhai Patel: Sir, I am prepared to accept this amendment of Mr. Santhanam with one change. I suggest that the last four words "by an absolute majority" should be dropped.

It was suggested that this should also cover the provinces where there are two chambers. I think it is not necessary because, where there are two chambers, if they differ, the case will come for reconsideration at a joint session. Therefore it is not necessary.

Mr. President: Mr. Santhanam, do you wish to say anything in reply?

Shri K. Santhanam: I will just say that I accept the suggestion made by Sardar Patel, but I wish to make one remark. When a bill is sent back for reconsideration, both the parties will marshal their forces, and unless the ministry has got 51 per cent., it is likely to be defeated. It does not matter whether the words "by an absolute majority" are there or not. The effect will be just the same.

Pandit Lakshmi Kanta Maitra: I do not know whether the amendment moved by Mr. Santhanam has been accepted by the House or not. It is not clear to me—I think it is not clear to many members of the House—as to what the decision of the House is with regard to the words "by an absolute majority".

Mr. President: What are you speaking about, Mr. Maitra?

Pandit Lakshmi Kanta Maitra: I want to know whether you are going to put to the vote of the House the deletion of the words "by an absolute majority".

The Honourable Sardar Vallabhbhai Patel: Mr. Santhanam has accepted the amendment.

Mr. President: How does it stand now?

The Honourable Sardar Vallabhbhai Patel: Without any reference to the remarks made by Mr. Santhanam, I accept his amendment but with the deletion of the words "by an absolute majority".

Dr. B. R. Ambedkar (Bombay: General): The sentence will read now, "If the Bill is passed again by the legislature with or without amendments, he shall assent to it".

Mr. President: Then I put Clause 24 to vote. The resolution as now amended, with those four words "by an absolute majority" omitted, will now read:

"The Governor of a Province in which the legislature consists of a single chamber shall have the right to return at his discretion a Bill passed by the legislature for reconsideration and may suggest amendments. If the Bill is passed again by the legislature with or without amendments, he shall assent to it."

The motion was adopted.

Part II—The Provincial Judiciary

Mr. President: We shall go to Part II—The Provincial Judiciary.

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

"1. The provisions of the Government of India Act, 1935, relating to the High Court should be adopted *mutatis mutandis;* but judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed).

2. The judges of the High Court shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule. . . . . .

3. The emoluments and allowances of the judges shall not be diminished during their term of office."

This clause proposes to incorporate the provisions of the 1935 Act regarding High Courts, but regarding the appointment of the judges it provides that the appointment shall be made by the President of the Federal Legislature in consultation with the Chief Justice of the Supreme Court and the Governor of the Province. With so many checks and counter checks these appointments place the High Court Judges beyond any influence of the parties or any other influences and beyoud any suspicion or doubt of such a nature. There is thus enough guarantee provided for the independence of the Judiciary. The other two clauses are purely consequential relating to pay and allowances for which I hope there are no amendments. I therefore move the proposition for the acceptance of the House.

(Dr. Subbarayan, Mr. Mallayya, Mr. Ramalingam Chettiar, and Seth Govind Das did not move their amendments.)

Mr. President: Then there is no amendment to this clause. Does any one wish to say anything about this clause?

Sir Alladi Krishnaswami Ayyar (Madras: General): Mine is also an amendment.

Mr. President: You may move it at this stage.

Sir Alladi Krishnaswami Ayyar: With your leave I propose to move the following amendment to Clause 1 in Part II.

At the end of Clause 1 in Part II, *add* the following:

"Provided that—

(a) all the High Courts in the Union of India shall have the right to issue prerogative writs or any substituted remedies therefor throughout the area subject to their appellate jurisdiction;

(b) the restriction as to jurisdiction in revenue matters referred to in section 226 of the Government of India Act, 1935, shall no longer apply to the High Courts; and

(c) in addition to the powers enumerated in section 224 of the Government of India Act, 1935 the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act, 1915."

The object of these amendments is to remove certain patent and glaring defects in the jurisdiction of the High Court to get rid of anomalies and to provide an adequate and effective machinery for the enforcement of fundamental rights. Clause (a) of the amendment deals with prerogative writs or any substituted remedies therefor. The reference to substituted remedies is to enable a simple remedy by application for writs in accordance with the procedure obtaining in England under recent enactments. Under the law as it stands the High Courts of Calcutta, Bombay and Madras have the right to issue prerogative writs within the limits of their ordinary original jurisdiction. The remedy by application was substituted for the Writ of Mandamus by the Specific Relief Act, but the remedy is confined to the presidency towns. There is no conceivable reason why a citizen outside the limits of the presidency town should be left to the dilatory remedy of an ordinary suit while a remedy by application to the High Court is available to a resident of the presidency town. In regard to the prerogative writ of *habeas corpus*, the Criminal Procedure Code has enabled application of subsituted remedy for *habeas corpus* being available throughout the appellate jurisdiction of the High Court. The Privy Council has recently held that the remedy by way of *Certiorari* enabling the High Court to remedy proceedings of judicial and quasi-judicial bodies acting in excess of jurisdiction is available within the presidency town. Clause (a) when passed will enable all the High Courts in the Union of India to exercise the jurisdiction in regard to these matters throughout the area subject to their appellate jurisdiction.

[Sir Alladi Krishnaswami Ayyar]

The clause also will provide an effective remedy for the fundamental rights guaranteed under the constitution. Clause (b) is intended to remedy an anomaly in the jurisdiction of the High Court. The anomaly goes back to the days of Warren Hastings. Under the law as it stands there is no bar even to a district munsiff entertaining a suit which involved a right to revenue, but the High Courts are debarred from entertaining such suits. The other day the Federal Court while upholding the right of a litigant in every respect ruled that the suit filed in the High Court was liable to be dismissed on the technical ground based on section 226 of the Government of India Act. The need for removing this bar on the jurisdiction of the High Court is universally felt by the profession and has been emphasised in several statements of the High Courts in India. The last clause is intended to remedy a defect introduced by the Act of 1935 under which the High Courts were deprived of the powers of superintendence in certain respects over the subordinate courts. This amendment, I venture to state, has the universal support of the profession and I commend it for your acceptance.

Shrimati G. Durgabai (Madras: General): Mr. President, Sir, I wish to make it clear at the very outset that I stand here to support Clause 1 in Part II relating to the Provincial Judiciary. Sir, I wish to confine myself to that portion of the clause which lays down the procedure for the appointment of judges to the Provincial Courts. The clause runs on the following lines:

"... the judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed)."

Sir, we see thus by the manner provided in this clause we introduce some kind of intervention on the part of an external authority in matters relating to the provinces and the Provincial Governments. I think this kind of intervention and this kind of procedure laid down providing for the necessity for an external authority is bound to provoke in the minds of some people at least the fear that this is a sort of encroachment over the jurisdiction of the Provincial Government as opposed to the principles of provincial autonomy. But, Sir, I confess I myself was holding this view for some time, whether it would not be desirable to leave this matter to the discretion of the Provincial Governments, namely, the Governor acting on the advice of his Ministers. But on a careful consideration of the matter I find that the manner as suggested by the authors of this clause has greater advantages over the other. Hereafter in the new set-up conditions are bound to be different and the High Courts have got to take upon themselves greater and heavier tasks and onerous responsibilities. They are the repositories of the constitution; they have got to interpret the constitution. They are the guardians of the fundamental rights in

the Constitution. Every common man must look to these courts for fair treatment and justice. They have got to see that their rights are safeguarded and they are in safe custody. Therefore if we have got to achieve this, we have got to see to the successful working of these High Courts and this depends mostly upon the quality of the judiciary and the manner in which it is composed. The independence of the judiciary is a thing which has to be decided and this independence to a large extent depends on the way in which these judges are to be appointed. They should not be made to feel that they owe their appointment either to this person or to that person or to this party or to that party. They have to feel that they are independent. It is only in that case that we get efficiency of administration of justice. It is with a view to secure this kind of independence that some sort of check is necessary and the authors of the clause have provided for this check by bringing in some external authority to have something to do with the appointments relating to the Provincial courts. We may feel why the Chief Justice of the Supreme Court also is brought into this picture but in the interests of the purity of administration of justice the Supreme Court has a great part to play hereafter. It is the highest of the High Courts of India and it will have a general advisory jurisdiction and a general appellate jurisdiction which is similar to that now exercised by the Privy Council relating to Indian units. Therefore, it is to review the work of all High Courts and also exercise the powers of general superintendence, direction and control in all matters relating to the provincial judiciary. Several matters of the High Courts have got to come before this Court by way of revision, reference and appeal. Therefore, the Chief Justice of the Supreme Court has got a great deal to do with these High Courts and not only that, the Supreme Court in itself has got to be composed from among the judges of the High Courts as we see. Therefore, considering all these matters I feel that it is highly necessary that the Chief Justice of the Supreme Court is consulted by the President of the Federation in making these appointments to the provincial courts. Of course, this need not really leave a fear in our minds that the freedom of the provinces is curtailed to a large extent, but this sort of check will be used only on rare occasions and generally the recommendations made by the Governor on the advice of his Ministers and in consultation with the Chief Justice of the High Courts will be accepted so long as they are right and also their choice is bound to be good generally, except in very rare instances when the intervention of the Federal Authority is to be brought.

There is another point to be taken into consideration, namely, this, that we need not feel that we are doing something very unusual. There is no one uniform principle in all federal constitutions of the world that this power of appointment to the judges of the High Courts of the units should always rest with only the Provincial Governments. It is not necessary. We have got an instance provided to us in the Canadian constitution where the power of appointment rests with the Governor General who will make the appointment. Therefore we can

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accept this principle without any fear or favour and adopt it in our system.

With these few observations, Sir, I support this clause and I commend it for the acceptance of the House.

B. Pocker Sahib Bahadur: Mr. President, Sir, I have great pleasure in supporting the amendment moved by Sir Alladi Krishnaswami Iyyar. Every one of those clauses is absolutely necessary having regard to the difficulties which people have been experiencing as a result of the Government of India Act of 1935 and also the recent ruling of the Privy Council regarding *certiorari*. Until the recent ruling, we were having this remedy by way of unit of *certiorari* as regards the mofussil also, but as a result of the Privy Council ruling, we are restricted as regards that remedy only to Presidency towns. It is absolutely necessary that such a remedy must be available to the people of the mofussil also.

As regards the power of superintendence to be vested in the High Courts we were having the remedy before the passing of the Government of India Act of 1935, but all such remedies were excluded by the new provisions of the 1935 Act, and the litigant public have been feeling very much about the absence of the right of superintendence in the High Courts as regards proceedings in the mofussil courts. The result is that people are now restricted to remedy under Section 15 of the C.P.C. which is inadequate and does not cover all cases in which remedy is necessary. Therefore, Sir, it is necessary that these matters should be made very clear, particularly for the reason that hereafter we may not be able to rely on English practice and on precedents in England.

I do not know how far I am right; but I presume for the time being that English precedents and practice may not be available to us as authority hereafter. In view of these circumstances, it is absolutely necessary that these clauses should find a place in the measure that we are passing.

I have only to make another observation in connection with this clause. I have given notice of an amendment in which I suggested that instead of the Chief Justice of the High Court of the Province concerned, it must be the High Court itself that should be consulted Instead of the consultation being confined to the Chief Justice, the consultation must be with the High Court. My amendment being an amendment to another amendment given notice of by Dr. Subbarayan, as Dr. Subbarayan has not moved that amendment, my amendment fails. However, I would like to make this remark for the Drafting Committee that it is very desirable that the consultation should not be restricted to the Chief Justice of the High Court, but should be with the High Court as such, so that the matter may be considered by all the Judges of the High Court at the Judges Meeting, and the result might be communicated to the authorities concerned.

With these observations, I support the amendment proposed by Sir Alladi Krishnaswami Ayyar.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I support Part II, Clauses 1 to 3. At the same time, I would like to have some information from the Honourable Mover as to whether any discussion has taken place and when we shall know anything about any result of the agitation that has been carried on in this country by all parties in regard to the separation of the judiciary from the executive, whether we are going to get this matter considered in the report Pandit Jawaharlal Nehru will submit on behalf of the Union Powers Committee. I only want to ask this question and I hope the honourable mover will give us some information on this point.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I wanted to draw the attention of the Mover and the House to Clause 3 of Part II in which it is laid down that the "emoluments and allowances of the Judges shall not be diminished during their term of office". I was thinking, Sir, that the term "diminished" would not meet the requirements and that this should be replaced by the word, "varied". I am sorry I have not tabled an amendment, because there were other amendments which I thought would be moved. In any case, the matter is of importance and I therefore wanted to draw the attention of the Mover to this. Perhaps it may be rectified at the stage of drafting. The reasons and the principle which I suppose guided the members of the Provincial Constitution Committee to lay down that the emoluments will not be diminished during their term of office will be precisely the same as in the case of increasing their salary also. You would not naturally want the judiciary to be constantly looking up either for increasing their salary, or be under the apprehension that there will be a decrease in their salary. In these circumstances, I think it will be desirable that the word "diminished" should be changed by the word "varied", with the approval of the mover.

I have not formally moved an amendment. But I think the matter is of sufficient importance to be brought to the notice of the House.

Sri M. Ananthasayanam Ayyangar: I find, Sir, with all respect, that this amendment may bring in complications for this reason. I agree with Sir Alladi Krishnaswami Iyer that the powers of the High Court have to be enlarged. There are a number of restrictions placed under the Government of India Act now on the powers of the High Court regarding revenue jurisdiction. This is No. 1 in his amendment by which he wants to correct this Act. In his amendment he wants to say that the High Court shall exercise jurisdiction over all revenue matters also without any of the restrictions or limitations contained in the Government of India Act. One of them is under section 226 which runs as follows:

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"Until otherwise provided by Act of the appropriate legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof according to the usage and practice of the country . . . . . ."

Does he want by the Constitution Act to confer original jurisdiction in revenue matters also or in the matter of collection? These have been exempted. If such a power should be given here and incorporated in the Constitution Act itself, any change that may be necessitated by experience will have to be made by way of an amendment to the Constitution Act. There is absolutely no objection to the legislature being invested with all powers to make laws increasing or enlarging the jurisdiction of the High Court removing the restrictions.

So far as the jurisdiction of the High Courts in the matter of writs is concerned, they are subject now to any Order in Council that may have been passed by the Government, under section 223, Orders in Council by His Majesty the King or otherwise. Some of the writs may be obsolete, some of them may be necessary or may be found obsolete later on. Should we go into the details? In case there is need to modify this, there will have to be two-thirds majority in both the Houses and all the processes and procedure for modifying the constitution will have to be gone through as in other substantial matters. We can easily say the provincial legislature shall be entitled to enlarge the jurisdiction of the High Court or place a restriction upon that. I do not feel that any of these matters need to be incorporated in a Constitution Act like this.

Again, Clause (c) says that in addition to the powers enumerated in section 224 of the Government of India Act, 1935, the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act. I do not deny that the High Court's powers may be enlarged in the manner suggested by Sir Alladi in his amendment. But the local legislature is competent to give not only those powers, but additional powers also not contemplated in section 107 of the Government of India Act. Why should we restrict to this or that? Evidently, Sir Alladi finds that the draft constitution placed before the House which we are discussing, seeks to embody all the provisions that exist in the present Government of India Act. I agree that we ought not to bodily incorporate those provisions whether they are good or bad. The framers of the constitution will go into the details and empower the local legislature to pass laws and regulations without intervention of His Majesty in Council, to enlarge the jurisdiction of the High Court in necessary matters, empower it to issue writs wherever necessary. These are details which will have to be referred to a Committee how and in what manner jurisdiction has to be enlarged. For this, the legislature, as we propose to have it, is entitled to go into these things. Certainly, my friend Sir Alladi would say that it is not a matter which could be disposed of at a sitting by all

people; that it must be referred to a Committee of experts, so that they may look into every one of these clauses before incorporating them finally into the Bill. We have not that opportunity. He merely says the High Court's powers ought to be enlarged in a particular manner which may be good or bad. We admit it is good. Sometime later on, it may be found bad or oppressive or hard. There may be a necessity for decentralisation.

The powers of superintendence by the High Courts may be unnecessary, and uncalled for in certain matters. Therefore if we irrevocably confer all these powers on the Provincial High Courts, it will be very difficult. Why should we introduce those details? I should therefore say that my friend only wanted to bring to notice, by placing this amendment, the need for enlarging the powers of the High Courts in this direction. No doubt he has chosen the wrong method. The right method will be to place it before the Legislature and see to it that the Provincial Legislature has all the powers to enlarge the powers of the High Court in the matter of superintendence regarding revenue matters. I therefore request him not to press his amendment because it will lead to unnecessary complications.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, the remarks of my friend Mr. Ananthasayanam are based on the present Government of India Act. But the reason why Sir Alladi's amendment is necessary has been placed before the House fully. The position with regard to Prerogative Writs is a technical matter and naturally therefore there might be a certain amount of difficulty for ordinary men to understand it but we must realise the important fact in this country, *viz.*, that only the High Courts of Calcutta, Bombay and Madras which have inherited the jurisdiction of the King's Bench Division have the power to issue Prerogative Writs within the original jurisdiction of those cities. Other High Courts have not that power nor does the power of these three High Courts extend beyond the original jurisdiction of the three towns concerned. The intention of this Clause is to see that every High Court in India should have the same power of issuing Prerogative Writs as the King's Bench Division has in England. This is not covered by the Government of India Act, nor covered by anything else. What this amendment seeks is that the High Courts in India in the Provinces should have the powers possessed by the King's Bench Division. These Prerogative Writs were ancient and known to the English Common Law but many of them have now been brought into use in Calcutta, Madras and Bombay and as lawyer members of the House would realize during the difficult days of 1942 to 1945 when the Defence of India Act was in operation, these writs did a great deal of service in vindicating the

Further we have to consider this fact also that this Constitution of India, of Free India, will be a kind of Charter. It will also contain Fundamental Rights and also recognize the Rights of Citizens in certain Funadmental Rights and certain obligations on the part of Government. Now all those must be enforced by some kind of remedy

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in the nature of the remedies which are now secured by a Britisher from the King's Bench Division. In the Constitution of the Union where the Supreme Court is constituted the Supreme Court has been invested with the power to issue these Prerogative Writs. With regard to the Constitutional rights and various other rights, if the power is only invested in the Supreme Court and not in any other High Court, it will follow that every citizen in order to vindicate his rights would have to come to Delhi. The intention of the amendment moved by Sir Alladi is that all the High Courts must have similar powers to issue Writs within their jurisdiction. This is the only meaning of this clause. It is necessary to have it in the Constitution because otherwise a Legislature may take away or attempt to take away certain powers of the High Court. Any analogy of the Government of India Act would not apply. This being the object, it is necessary that this amendment should be there.

I know that the word 'Prerogative Writs' is a very vague word. That is the reason why Sir Alladi's amendment uses the words—"any substituted remedies therefor". The idea is that either in a form defined by the Constitution or by any law made under the authority of the Constitution, those Writs will be preserved. There is no doubt about it.

The Prerogative Writs are largely the creature of common law in England but attempts are made in England to put them in the Statute book in a precise form. There is no reason why we should now allow the Common Law form to remain in its vagueness, in the present proposals. Some attempt will be made later to define those Writs in a proper legislation. The principle embodied in the amendment is that the High Courts in the Provinces must have the power to issue Prerogative Writs or some remedies of the kind. So, the objections raised by my friend Mr. Ananthasayanam are not valid.

As regards Clause (b), there is a restriction imposed by the Government of India Act as regards jurisdiction in revenue matters. This is only done as a matter of history. This amendment recognizes the principle that even revenue matters are subject to law. As regards Clause (c)—General superintendence, the High Courts will have superintendence over all Subordinate Courts and this clause does not require any elaboration.

The object is that this principle must be embodied in the Constitution. It is not intended that the Provincial Legislature should have the power to tinker with these powers of the High Court. The actual power and independence of the High Courts in these matters have to be maintained in order that the liberties and rights of citizens are not curtailed by a majority in the Legislature. In defence of civil liberties and in the interests of democracy these powers are essential.

Mr. Tajamul Husain: Clause 3 of Part II lays down that the pay of the Provincial High Court Judges cannot be decreased during their term of Office, but it does not say anywhere that it cannot be increased.

Sir, we must maintain the dignity and impartiality of the High Courts at all costs. If we do not mention in our Act that their pay shall not be increased and decreased, it will be giving them a chance—because after all they are human beings—they will be looking upto the Legislature for favours of increment of their pay. This is a very important matter. I have not given notice of any amendment. The reason was that some honourable members had sent amendments. Therefore, Sir, my friend Rai Bahadur Shyamnandan Shahai has suggested the change, which I hope the Honourable Mover will accept. At present the provision reads:

"The emoluments and allowances of the Judges shall not be diminished during their term of office."

I suggest substituting the word "varied" for the word "diminished"; with this change it will read:

"The emoluments and allowances of the Judges shall not be varied during their term of office."

I submit this for the acceptance of the House.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, I wish to say one thing in reference to Clause 1 of Part II. The first part of it reads:

"The provisions of the Government of India Act, 1935, relating to the High Court should be adopted *mutatis mutandis*; . . . . . ."

I find Sections 219 to 231 of the Government of India Act relate to High Courts. With reference to one of the important provisions in that Act, I find the question of language comes in. Section 227 of that Act reads:

"All proceedings in every High Court shall be in the English language."

I do not know if sufficient attention has been given to this aspect of the matter. I do not think, Sir, it is the intention of the Mover that the proceedings in the High Courts shall be in the English language. We are now talking of a national language or All-India language. My own personal view is that in every province, the provincial language shall be the language in which all the proceedings of the Province, including those of the High Court, shall be carried on. It may be that for some transitional period, we may have the English language, but I do not think we can allow English to be the language of our High Courts for all time to come. But the position is, if we accept the first part of this clause as it stands with the words "*mutatis mutandis*" we may be committed to having the English language. I therefore, wish that some suitable provision may be made in this clause so as to avoid Section 227 of the Government of India Act with reference to the English Language.

Mr. President: As there is no one else who wishes to speak, the Mover of the Resolution may reply to the debate, if he wishes to.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I accept Sir Alladi's amendment.

With regard to one or two questions that have been put, I would like to say a few words. Regarding the question raised by Mr. Jaipal

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Singh as to what has been done about the separation of the judiciary from the executive, I can only say that this is not the place to introduce that subject. This clause we are now considering only refers to the formation of the High Court, its constitution, the method of appointment of the judges, its powers and things like that. The real question which he has raised can be decided by the Legislature; it is a matter of policy to be decided by them; and I do not think there will be any difficulty now in separating the judiciary from the executive.

The other point raised is about changing the word 'diminished' into 'varied', that the word 'diminished' should be substituted by the word 'varied'. I do not think this change is necessary, for the existing provision says that the emoluments, etc., should not be varied to the disadvantage of the judges, and that clears the position. So I do not propose to have any changes made in the wording.

As I said, I accept Sir Alladi's amendment, and I commend the proposition for the acceptance of the House.

Mr. President: I shall now put the motion to the House.

Shri L. Krishnaswami Bharathi: My point regarding the language in the High Court has not been answered to. It is an important point.

Mr. President: It is, of course, an important point; but I suppose the Drafting Committee will attend to it.

Shri L. Krishnaswami Bharathi: Sir, '*mutatis-mutandis*' means everything as it is, which means that you cannot vary the provision in the Government of India Act, at the time of drafting our provision. If we accept it as it is, the Drafting Committee will be committed to keeping English as the language of the High Court.

Dr. B. Pattabhi Sitaramayya (Madras: General): Sir, I think '*mutatis mutandis*' means with the necessary changes.

Mr. President: Yes, that is my impression also. This will cover any changes that the Drafting Committee may suggest ultimately.

I shall put Sir Alladi's amendment to vote.

That the following proviso be added at the end of Clause 1:

"Provided that—

(a) all the High Courts in the Union of India shall have the right to issue prerogative writs or any substituted remedies therefor throughout the area subject to their appellate jurisdiction;

(b) the restriction as to jurisdiction in revenue matters referred to in section 226 of the Government of India Act, 1935, shall no longer apply to the High Courts; and

(c) in addition to the powers enumerated in section 224 of the Government of India Act, 1935, the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act, 1915."

The motion was adopted.

Mr. President: Then I shall put the resolution to the vote of the House, as amended, *i.e.*, with the addition of the proviso which has been just accepted. I do not think I need read out the whole clause.

Part II, as amended, was adopted.

Part III—Provincial Public Service Commission and Provincial Auditor-General

Mr. President: Now we pass on to Part III.

The Honourable Sardar Vallabhbhai J. Patel: Sir, this part refers to the Public Service Commissions and the Auditors-General.

"Provisions regarding Public Service Commissions and Auditors-General should be inserted on the lines of the provisions of the Act of 1935. The appointment of the Chairman of members of each Provincial Public Service Commission and of the Auditor-General should be vested in the Governor in his discretion."

It is proposed to give the power to the Governor. I move the proposition for the acceptance of the House.

Mr. President: There are amendments to this by Shri Khurshed Lal and Shri Gopinath Srivastava, Shri S. L. Saksena, Pandit Pant and Mr. Santhanam.

(The amendments were not moved.)

Shri K. Santhanam: Sir, with reference to Part III I have an amendment (No. 23 on Second Supplementary List, dated the 16th July 1947). Though I do not want to move the amendment at this stage, I want you, Sir, to give a ruling that this can be taken up when the Union Constitution is taken up for consideration, as it has been suggested that it can be taken up at that time. I only want to make sure that this will not be ruled out then. I want to know whether you will permit me to move the amendment at that time.

Mr. President: If you wish to move the amendment now you can do so. I can give you no promise as to the future. I can permit you to withdraw your amendment now if you wish to, and the question will be considered at the right time, whether the amendment can be moved in connection with the other report.

Shri K. Santhanam: Sir, I do not wish to move my amendment.

Mr. President: The question is:

"That Part III be accepted."

The motion was adopted.

Part IV—Transitional Provisions

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

"1. Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor, duly elected under this Constitution, assumes office.

2. There should be similar provisions, *mutatis mutandis*, in respect of the Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House).

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3. The Government of each Governor's Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities."

These are provisions for the transition period in order to avoid an interregnum. I do not think there can be any controversy over this and I hope it will be accepted.

Shri T. A. Ramalingam Chettiar (Madras: General): I do not wish to move my amendment to Clause 1 (No. 119 on List, dated the 15th July 1947).

Shri K. Santhanam: I do not want to move my amendment to Clause 3 (No. 120 on List, dated the 15th July 1947).

Sri M. Ananthasayanam Ayyangar: I do not wish to move my amendment to Clause 1 (No. 24 on Second Supp. List, dated the 16th July 1947).

(Pandit Govind Malaviya, Shri Rohini Kumar Chaudhury, Sri M. Ananthasayanam Ayyangar, Shri Mohanlal Saksena and Prof. N. G. Ranga did not move their amendments in the 3rd and 4th Supplementary Lists.)

Mr. President: There are two amendments by Mr. Ananthasayanam Ayyangar, which are independent propositions. I shall take them up later.

Mr. K. M. Munshi: I have only one remark to offer with regard to Clause 3 of this part, which says:

"The Government of each Governor's Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this constitution in respect of all property, assets, rights and liabilities."

I feel, Sir, that the words "successor of the Government" might create difficulties and at this stage it would serve no useful purpose to keep Clause 3. I therefore submit that Clause 3 should be deleted. The words "successor Government" might lead to other complications which need not be invited at this stage.

Mr. H. V. Kamath (C. P. & Berar: General): Mr. President, Clause 1 of this part is of course unexceptionable and I think there will be no difficulty in the way of its acceptance by this House. But upon its acceptance certain consequences will, to my mind, flow from it and therefore I wish to draw your attention and the attention of this august Assembly to those consequential aspects of this clause, *viz.*, Clause 1 of Part IV. This clause says:

"Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor, duly elected under this Constitution, assumes office."

We are today passing from the darkness of servitude to the light of freedom. But there is bound to be an interregnum between our Dominionhood and that Republican Independence for which we are striving. This interregnum may be long or it may be short, and again there will be another time lag between today and the commencement of this constitution. By 'commencement' I believe the promulgation of this constitution is meant. I presume that the constitution will be

promulgated, perhaps by the end of this year but between now and that date of the promulgation of the constitution we are entering upon a new state and that is the state of Dominionhood. The Indian Union will be formally ushered in or inaugurated as a Dominion on the 15th of next month. Therefore, if according to this clause, in December when the constitution is likely to be promulgated, there are certain Governors in certain Provinces, they are likely to continue as such and they will be deemed to be the Governors under this constitution. I want to emphasise the words "shall be deemed to be the Governor of the Province under this constitution". I think it would be derogatory to the dignity of the constitution, if certain non-nationals are permitted to continue as Governors under this Constitution after the commencement of this Constitution and before elections under this constitution take place. As we all know, very shortly, in the middle of next month, it will be within our power, within the competence of our own leaders to say who will be Governors and where. If, unfortunately some non-nationals—Europeans or Britishers—remain or are appointed as Governors in certain provinces, on August 15th, it will follow that in December when the Constitution will be inaugurated or will commence, they will be there and therefore they will continue as Governors under this Constitution till the elections take place and their successors assume office. Therefore, Sir, I submit that this is a position which, as a Sovereign body today and aspiring to become shortly a Sovereign legislature of the Dominion, we cannot envisage or tolerate. We have struggled hard these many years and decades to see the end of foreign rule in India. A few months less than five years ago, our cry, our revolutionary campaign of 'Quit India' was launched and it is a happy coincidence that in the very month of August we in India are attaining Dominionhood if not independence, quite a good degree of independence and power will, I hope, come into our hands. Thus, Sir, when it will be within our competence to have our own Governors, I for one want that our own nationals and citizens of the Indian Union should be the Governors when the new Constitution is inaugurated. I wish to draw your attention to these words in the Transitional Provisions I am quoting: "In any province immediately before the commencement of this Constitution". We should take care to see that the Governors in all our Provinces immediately before the commencement of this Constitution are Indians, our own nationals and not non-nationals or foreigners. Have we undergone all these troubles and fought the rulers on so many occasions merely to see these martinets, these panjandrums and these minions of a foreign imperialism continuing their rule in our Provinces? I should like to see the end of it. I do not like to see the day when even after the commencement of this Constitution these very Europeans, whom we asked to quit five years ago, will be continuing as our rulers in certain provinces. I was hard put to it, some days ago, to explain to a common man, why Lord Mountbatten was recommended for the Governor-Generalship of the Dominion of India. We can quite understand and appreciate the high considerations of diplomacy, political strategy and tactics which influences the recommendation of Lord Mountbatten for the Governor-Generalship. But the common man fails to understand it all. It is true that we cannot always act on the views of the common man. But, at the same time, in a

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democracy the psychology of the common man has its place. Democracy is largely conditioned by the psychological reflexes of the common man. I would request the Hon'ble Mover and this Assembly to bear these considerations in mind and see that the Governor of any Province immediately before the commencement of this Constitution is not a non-national. It is our men, our citizens who should be there. It is only if we see to this that we can produce the necessary psychological reaction in the mind of the common man. We will fail to produce this essential psychological effect if on the dawn of freedom and independence he were unfortunately to see the same foreigner still stalking the land as ruler or Governor. Our 'Quit India Resolution' is fast bearing fruit. At such a time we should create in the mind of the common man the impression that all power has been taken over by us towards the consummation of the 'Quit India Revolution'' which was inaugurated by us five years ago.

नान्यः पन्था अयनाय विद्यते (*nanyah pantha ayanaya vidyate*)

When we are shortly going to witness the dawn of independence we must make a supreme effort to see that the common man is able to grasp the fact that we are our own masters and that there is no foreigner ruling over us. The sooner we do this the better it is for us and for our country. If we achieve this we will have gone a long way towards awakening the 'shakti' necessary for building up our Indian Union. I am sure I am voicing the feelings of a vast majority in this Assembly when I say that at the time of the inauguration of the Provincial Constitutions, no foreigner remains as Governor in any of the Provinces. It would be a mistake to allow a foreigner to continue as Governor of a province, after that date.

Sir, I will conclude with the words used on another historic occasion and request this August Assembly to tell the foreigner ''We asked you to quit India five years ago. We now again tell you with more power, more authority in our hands: For God's sake, go. Leave India to its own fate. Leave India free to build up a strong Independent Sovereign Republic.'' ''Jai Hind.''

Sri M. Ananthasayanam Ayyangar: I should like to say a few words with regard to the Transitional Provisions. These ought to be absolutely transitional. That is my desire.

We must congratulate ourselves, Sir, that we have spent five days over the elaborate provisions recorded in this Constitution submitted to the Assembly. I am sure we will be able to finish the details considered by the Expert Committee that will be appointed to go into the details of the formalities and bring out the Constitution at an early date. All that I am anxious about is that, when the British Government who originally fixed 30th June 1948 for ushering in a new Constitution have advanced the date, we should not be found unready. We should have our Constitution ready and there should be no delay on our part. I do want that 26th January 1948, the day which we have been celebrating as Day of Independence for India should surely be the day when we celebrate the Independence of India. Let it not be said that we have unnecessarily dragged the proceedings here. We will not be charged with that. We have spent

only five days on this important matter. We have not left the details to take care of themselves. I hope all concerned will be able to push through the necessary work so that on the 26th day of January we will really have an Independent India and work under an Independent Constitution. As regards the present Governors continuing till then, I am sure that they will not continue for any longer time than is necessary. When the new constitution comes into being, I expect that only nationals will be appointed as Governors.

Thirdly, after the new constitution is framed, it will take some time before elections take place: before delimitation of constituencies takes place. All these will take some time. I do not want to have any definite date fixed within which elections should take place under the new constitution. At the same time, I would like to urge that after the new constitution has been framed, care should be taken to see that within six months and not later than that, the new constitution must be in full swing. Even before the constitution is drafted, since we are providing for adult franchise; we should ask the existing Governments to prepare the electoral rolls regarding adults in every village and town. Thereafter, the delimitation of constituencies will have to take place. No effort should be lost and all efforts must be made to see that the new constitution comes into being as early as possible. With these words, I support these transitional provision clauses.

Mr. President: Does anyone else wish to speak about this?

Shri Biswanath Das (Orissa: General): Mr. President, Sir, I heartily congratulate the Honourable Sardar Patel for having piloted the report within the shortest possible time, Sir, while congratulating him, I must also confess that the constitution that has been drafted for the provinces gives them less powers than what the provinces were enjoying under the Act of 1935.

We expect to have under the new dispensation a government of the people, for the people and by the people. Now, all these three slogans will be meaningless if we do not have the leaders of the people of the provinces as governors of the provinces. Sir, the interim period that lies between the present and the date of the election should not be marred by having men of the permanent services as governors of provinces. Sir, I support the decision taken in nominating Lord Mountbatten as the Governor-General. There may be important reasons and justifications for the same. The country will be fully with our leaders in that. Sir, that cannot however be translated into the provinces. I am not here to make any distinction between nationals and non-nationals. Sir, I cannot agree to see that people, who have been public servants, continue as governors of provinces. Most of the I.C.S. people do not have the Indian outlook and cannot in any sense be termed as servants of the people. That being the case, I would submit that it would be very hard on the country to tolerate a system of administration in which the same I.C.S. regime is being perpetuated in the provinces. I believe our leaders will not commit this blunder.

Sir, with these submissions, I fully support the resolution and congratulate the Committee on having presented a report which was

[Srri Biswanath Das]

acceptable to the House so as to be passed within the shortest possible time.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I suggest a verbal alteration in Clause 1, third line. Instead of the words "shall continue", I want to insert the words "may be continued".—"Any person holding office as Governor in any province immediately before the commencement of this Constitution *may be continued*". In the fourth line I suggest the insertion of the words "when so continued" after the word "and". These are purely verbal alterations.

I will now remind the House that perhaps some of the friends who gave valedictory orations have forgotten that there is still one clause, Clause 15, to be moved. It is a controversial clause and it will take some time.

Shri C. Subrahmanayam (Madras: General): May be continued by whom? Who is the authority to continue him as Governor under the new Constitution?

The Honourable Sardar Vallabhbhai J. Patel: No doubt by the Government of India, who is the authority to appoint him. There is no difficulty about that.

Mr. H. V. Kamath: "May continue" or "may be continued". Why not "may continue"?

The Honourable Sardar Vallabhbhai J. Patel: Put in "may continue" if you like.

Dr. P. S. Deshmukh (C. P. & Berar: General): "May be continued" is better. "May continue" is likely to be interpreted as "should continue" and Mr. Kamath would be defeating just the object that he has in view. "May be continued" involves continuation only if so ordered by the Government.

Mr. President: I put this resolution to vote with this verbal change. In place of "shall continue" substitute the words "may be continued" and in the fourth line add the words 'when so continued' after the word 'and'.

The motion was adopted.

Mr. President: Mr. Munshi, you moved that Clause 3 be deleted. I am sorry I did not put that to vote, but I take it that it is accepted.

The motion was adopted.

Mr. President: I shall now put the whole resolution as amended by the deletion of Clause 3 to vote, because there was some misunderstanding.

Part IV, as amended, was adopted.

Mr. President: Mr. Ananthasayanam Ayyangar has given notice of an amendment.

(The amendment was not moved.)

CLAUSE 15

Mr. President: There was one clause which was passed over and that was Clause 15 and we may take up that now.

The Honourable Sardar Vallabhbhai J. Patel: I move:

"15. (1) In the exercise of his responsibilities, the Governor shall have the following special responsibility, namely, the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof.

(2) In the discharge of his special responsibility the Governor shall act in his discretion:

Provided that if at any time in the discharge of his special responsibility he considers it essential that provision should be made by legislation, but is unable to secure such legislation, he shall make a report to the President of the Federation who may thereupon take such action as he considers appropriate under his emergency powers."

Honourable Members may kindly refer to my introductory speech in this connection. This question of discretionary powers of the Governor is a matter which requires very careful consideration. On the one hand it encroaches upon the powers of the Ministry. The Governor has not got the services under him and if he is to exercise his functions in his discretion, if he is given authority to take control of the services for the purpose of discretionary responsibility, then it is difficult to conceive how the ministry can function and it almost amounts to a sort of introduction of Section 93 under the provisions of this Act. Again on the other side there is a feeling that looking to the conditions prevailing in the country, some provision should be made for giving special responsibilities to meet with the difficult situation which has arisen in the country today. For this purpose this clause requires careful consideration and I hope all points of view will be made clear in this debate. I therefore move this proposition for the acceptance of the House.

The Honourable Pandit Hirday Nath Kunzru (U. P.: General): Mr. President, I venture to suggest that it will be in the interests of us all if the discussion of this question is postponed till tomorrow. We have a new amendment before us of which notice has been given by Mr. Munshi and I think it is desirable that we should have some time to think over it. There is no doubt that we have been thinking about this question for many days, but no suggestion was before us in the exact form which it has assumed in Mr. Munshi's amendment. I suggest, therefore, that we might take it up tomorrow. It is only half-past twelve now and the House will not lose more than half an hour if we adjourn the discussion till tomorrow. I hope that my suggestion will meet with the approval of the House, and of you, Mr. President.

Mr. President: I was going to suggest that instead of not utilising this half hour we might have the amendments moved and further discussion might take place tomorrow if that meets with the approval of the House. Thus the members will have an opportunity of considering the amendments also with the speeches of the Movers of those amendments, if that meets with the wishes of the House.

The Honourable Pandit Hirday Nath Kunzru: Are you suggesting that the amendments should be moved today and that the speeches might be reserved till tomorrow?

Mr. President: If any mover of any amendment wishes to have that right, I shall give him that right.

Dr. B. R. Ambedkar: It should not be concluded today.

Mr. President: The first amendment is by Messrs. Ajit Prasad Jain, Khurshed Lal and Gopinath Srivastava.

(The amendment was not moved.)

(Messrs. K. Santhanam, Kala Venkata Rao, M. Ananthasayanam Ayyangar, Shibban Lal Saksena, and Pandit Govind Ballabh Pant did not move their amendments.)

Mr. B. M. Gupte (Bombay: General): I beg to move Sir, that the proviso to sub-clause (2) of Clause 15 be deleted and the following new sub-clauses be added:

"(3) If in the discharge of his special responsibility the Governor is satisfied that a situation has arisen in which immediate action has to be taken, he may, by a proclamation assume to himself all or any of the powers vested in or exercisable by any provincial body or authority except the High Court.

(4) The Proclamation shall be communicated forthwith to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.

(5) The Proclamation shall cease to operate at the expiration of 2 weeks, unless revoked before then by the Governor himself or by the President of the Union under his emergency powers, whichever is earlier."

Mr. President: Pandit Hirday Nath Kunzru.

The Honourable Pandit Hirday Nath Kunzru: Mr. President, the amendment of which I have given notice runs as follows:

"That for Clause 15, the following be substituted:

'Whenever the Governor is satisfied that there is a grave menace to the peace and tranquility of the Province or any part thereof, he may, in his discretion, report to the President of the Federation.

NOTE.—The President may take such action on the report under the emergency powers vested in him as he considers appropriate'."

Sir, I shall reserve my speech till tomorrow because it will obviously be an advantage to consider the matter as a whole after all the amendments have been moved.

Mr. President: Mr. Munshi.

Mr. K. M. Munshi: Sir, this amendment is only an elaboration of Mr. Gupte's amendment. I think I should also reserve whatever I have to say on the amendment for tomorrow.

Mr. M. S. Aney: On a point of order, Sir, Mr. Munshi's amendment is an amendment to an amendment given notice of by Pandit Govind Ballabh Pant but inasmuch as Pandit Pant did not think it worth while to move his amendment at all, there is no question of Mr. Munshi moving an amendment to that.

Mr. President: May I point out that an amendment in the same words as Pandit Govind Ballabh Pant's has been moved by Pandit Kunzru?

Mr. M. S. Aney: Then it will require a change in the wording which should be "moved by Pandit Hirday Nath Kunzru".

Mr. K. M. Munshi: Mr. Aney seems not to have read the paper correctly. I have moved two amendments one to Pantji's, and another to Mr. Gupte's amendment. Since the former amendment was not moved, and Mr. Gupte has moved his amendment, I am perfectly in order inspite of Mr. Aney's protest. The amendment is:

"That for Clause 15 the following be substituted:

"(1) Where the Governor of a Province is satisfied in his discretion that a grave situation has arisen which threatens the peace and tranquility of the Province and that it is not possible to carry on the Government of the Province with the advice of his Ministers in accordance with the provisions of Section 9, he may, by Proclamation, assume to himself all or any of the functions of Government and all or any of the powers vested in or exercisable by any Provincial body or authority; and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.

(2) The Proclamation shall be forthwith communicated by the Governor to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.

(3) The Proclamation shall cease to operate at the expiration of two weeks, unless revoked earlier by the Governor himself or by the President of the Union."

Mr. H. V. Kamath: With due deference to the legal and constitutional ability of Mr. Kunzru, I would like to submit that the phrase "satisfied in his discretion" is not quite happy. One may say or do something in one's discretion, but "to be satisfied in one's discretion" is not usual.

Mr. President: We shall adjourn the discussion of this till tomorrow.

Honourable Pandit Hirday Nath Kunzru: I shall deal with Mr. Kamath's point tomorrow.

Mr. President: We might now take up the other item on the agenda, namely, the report of the Committee dealing with the Union Constitution. Pandit Nehru will move the motion which stands in his name.

Mr. H. V. Kamath: Mr. President, last night we received notice of a motion to be moved by Dr. Nehru tomorrow regarding our National Flag. I would request you to let us know up to what hour we could send in amendments to this motion.

Mr. President: Since you received the notice last night—, you could have sent in your amendment by now, but if you have not sent it, you may send it up to 5 o'clock today.

Maulana Hasrat Mohani (U. P.: Muslim): I do not find any mention of the amendment moved by me about this Union Report

[Maulana Hasrat Mohani]

There is an amendment by Dr. Deshmukh. I submitted mine at the same time.

Mr. President: The amendments have been circulated as Honourable Members know. We would have received that amendment late in the afternoon of Saturday. But all amendments have now been placed on the table.

Maulana Hasrat Mohani: I gave my amendment to Mr. Iengar two days before Dr. Deshmukh's amendment. It must find a place in the agenda and it must be before all Honourable Members.

Mr. President: We shall consider it when we come to that.

REPORT ON THE PRINCIPLES OF THE UNION CONSTITUTION

The Honourable Pandit Jawaharlal Nehru (U. P.: General): Mr. President, Sir, I beg to move:

"That the Constituent Assembly do proceed to take into consideration the *Report on the principles of the Union Constitution submitted by the Committee appointed in pursuance of the Resolution of the Assembly of the 30th April, 1947."

This Report has been circulated and after the full Report was circulated a †Supplementary Report or rather an addendum to the previous report has also been circulated. In this Supplementary Report certain changes have been made in the previous Report. So I am putting before the House the report as amended by the Supplementary Report. I ventured to circulate a note on this report to the members of this House two days ago in which I pointed out that so far as the Preamble and part of Clause 1 were concerned, they were covered more or less by the Objectives Resolution of this House. That Resolution holds. It may have to be varied in regard to smaller matters because of political developments since it was passed.

A Sub-Committee has been asked to go into the question of drafting. We are not changing the Objectives Resolution at all. What I mean is, adapting it to the Preamble. The Objestives Resolution is history and we stand by all the principles laid down in it. In adapting it to the Preamble, certain obvious changes have to be made. At the present moment, as the House is aware, we are not going into the drafting of the Constitution, but are establishing the principles on which this should be drafted. Therefore, that draft of the Preamble is not necessary. We have settled the principles. So I suggested in my note that we may not consider this matter.

Part II dealing with Citizenship has not been finally decided yet by the Sub-Committee and Part III dealing with Fundamental Rights has already been considered by this House and passed. I would therefore suggest that we might begin consideration of this Report from Part IV. Chapter I, The Federal Executive. There are one

*Appendix 'A'.

†Appendix 'B'.

or two minor matters which you may have to consider in Parts I and II. It is not necessary to take these one or two simple matters. It is better to begin with Part IV and consider the rest at a later period.

May I point out that I just mentioned that Fundamental Rights have been considered by this House and passed. All that we have passed will of course come up before the House once again for final consideration. There are many new members and it has been pointed out to me by some of them that they were not present here when these Fundamental Rights were considered and passed. Well, it is perfectly true. It is a little difficult for us to go back repeatedly and start afresh. That I do not think will be proper. But, as a matter of fact, all these things will finally come up before the House and it will be open to any of the members to point out anything or to amend any part of it at that time. So, I suggest, Sir, that we may proceed now with Part IV, Chapter I. If you have got the printed pamphlet, it is on page 5. It begins with Federal Executive.

The Report is a fairly long one. At the end of the Report, you will find an Appendix dealing with the judiciary. This is the Report of the *ad hoc* Committee on the Supreme Court. That is only for your information because these conclusions have been more or less incorporated in the Report.

Obviously, when we consider the constitution, the fundamental law of the nation as it is going to be, it is an intricate and important matter and we cannot just rush through it without giving it sufficient time and consideration. I may inform the House that so far as the Union Constitution Committee was concerned, it gave it their very earnest consideration, not once, but several times. We met the Provincial Constitution Committee also on several occasions and this is the result of our joint consultation, but mostly of the Union Constitution Committee's work itself.

I have just been given the list of amendments. This paper contains 228 amendments. I am told, in all we have reached the figure 1,000. I have not seen them as yet, none of them. It is rather difficult for me to deal with them now. I should like to abide by the wishes of the House in the matter.

If I may suggest one thing at present, it is this: that we start with Part IV—Federal Executive. The very first thing that comes up is how the Head of the Federation should be elected. I understand that there are several view points on that. Possibly that particular item may be taken up. It is a simple item. The views may be this way or that: but this is a simple issue and we may consider it now, not only because it is the first item, but because it can easily be taken up without a knowledge of the other large number of amendments. I beg to move this.

May I, Sir, now go on with item 1 of Part IV?

Mr. President: I will first put the resolution that the Report be taken into consideration.

Maulana Hasrat Mohani: I have stated that before you take into consideration the Report, I want to make certain points clear. In this paper, which he claims to be a supplementary report, Pandit Nehru has made certain suggestions. After all, these are only his suggestions. Is it necessary for myself or for anybody else to accept his suggestion? I for one do not accept these suggestions.

Besides, I have got very strong reasons for that. Pandit Nehru the other day said that we have already passed the Objectives Resolution and we have to keep that resolution before us in drafting everything now or afterwards.

Mr. President: Maulana Saheb, the simple proposition that I am putting to this House at the present moment is that the Report of the Committee be taken into consideration. When that is accepted, we will go clause by clause.

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): Sir, members can express their views whether this report should be taken into consideration or not. We should have a right to speak on that motion. Maulana Saheb is speaking on that motion.

Mr. President: Is it your suggestion that the Report should not be taken into consideration?

Maulana Hasrat Mohani: Yes. What I say is this. Pandit Nehru says that he has got the Objectives Resolution already passed by the

Maulana Hasrat Mohani: Yes. What I say is this. Pandit Nehru in that Objectives Resolution. It says simply that we will have a Republic. It does not say whether the Republic will be a Unitary Republic or a Federal Republic. Even if it is a Federal Republic, it does not make it clear whether that Federal Republic will be of a centrifugal or centripetal character and unless and until we decide all these things, it is futile to determine the model of Provincial Constitutions. This is why I suggested in my speech the other day: you want to get one thing passed in your provincial constitution; when you have passed the provincial constitution and when I propose on the occasion of a proposed revised Union Constitution Report coming for consideration before the next meeting of the Consembly perhaps in October, an amendment to the effect that it must be a Union of Indian Socialist Republics, then you may say, "you are precluded from doing that as that will be something like a settled fact. We have passed the provincial constitution and now there is no scope left for Hasrat Mohani to add anything or to say against that."

I am afraid, Sir, that it will be very easy for you to declare my amendments to the Union Constitution out of order as you did the other day in connection with an amendment proposed by my friend, Mr. Tajamul Husain. You will say "Well, the provincial constitution has been accepted and passed, now, your amendments are out of

order. You will say, that the report has been accepted and therefore my amendments are out of order. I will have raised no objection at this stage if this matter stands over. Then I will have every right to propose amendments on the occasion when you go clause by clause. Or I will have full rights to say that I oppose the Objectives Resolution also. I have got two reasons. One I have made clear that it does not decide anything.

Mr. Shankar Dattatraya Deo (Bombay: General): We cannot follow a single word or any idea.

Mr. President: (To Maulana Hasrat Mohani) Come to this mike, please.

Mr. Jainarain Vyas (Jodhpur State): On a point of order, Sir. The Honourable Member has already started considering the Report. The question before the House is whether the Report be considered or not. That question must be considered first.

Maulana Hasrat Mohani: Before considering the Report he should make certain points clear. It puts me at a great disadvantage if I accept this Report.

Mr. President: As I understand it, the Maulana's point is that I should give him a promise at this stage that his amendment will not be ruled out of order. Obviously I cannot give any promise to any member before the matter actually comes up. But you may all have noticed that I am very liberal in the matter of allowing amendments to be moved even if they come out of time. Unless there is any technical ground, I do not see any reason why his amendment may be ruled out of order. More than this I cannot say anything at this stage. I have given some sort of promise that Maulana wanted. I take it that the House wishes that we should proceed with the consideration of this report.

Many Honourable Members: Yes, yes.

The motion to take the Report into consideration was adopted.

B. Pocker Sahib Bahadur: I wanted to say one word about the proposition you have put.

Mr. President: I put it to vote and it has been carried.

The Honourable Pandit Jawaharlal Nehru: Sir, I suggest that we should begin with Part IV, Chapter I.

"*Clause* 1 (1) The Head of the Federation shall be the President (Rashtrapati) to be elected as provided below.

(2) The election shall be by an electoral college consisting of—

(a) the members of both Houses of Parliament of the Federation, and

(b) the members of the Legislatures of all the Units or where a Legislature is bicameral, the members of the Lower House thereof.

In order to secure uniformity in the scale of representation of the Units, the votes of the Unit Legislatures shall be weighted in proportion to the population of Units concerned.

Explanation.—A Unit means a Province or Indian State which returns in its own individual right members to he Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States

[The Honourable Pandit Jawaharlal Nehru]

a Unit means the group so formed and the Legislature of the Unit means the Legislatures of all the States in that group.

(3) The election of the President shall be by secret ballot and on the system of proportional representation by means of the single transferable vote.

(4) Subject to the above provisions, elections for the office of President shall be regulated by Act of the Federal Parliament."

Now Sir, one thing we have to decide at the very beginning is what should be the kind of governmental structure, whether it is one system where there is ministerial responsibility or whether it is the Presidential system as prevails in the United States of America; many members possibly at first sight might object to this indirect election and may prefer an election by adult suffrage. We have given anxious thought to this matter and we came to the very definite conclusion that it would not be desirable, first because we want to emphasize the ministerial character of the Government that power really resided in the Ministry and in the Legislature and not in the President as such. At the same time we did not want to make the President just a mere figure-head like the French President. We did not give him any real power but we have made his position one of great authority and dignity. You will notice from this draft Constitution that he is also to be Commander-in-Chief of the Defence Forces just as the American President is. Now, therefore, if we had an election by adult franchise and yet did not give him any real powers, it might become slightly anomalous and there might be just extraordinary expense of time and energy and money without any adequate result. Personally, I am entirely agreeable to the democratic procedure but there is such a thing as too much of a democratic procedure and I greatly fear that if we have a wide scale wasting of the time, we might have no time left for doing anything else except preparing for the elections and having elections. We have got enough elections for the Constitution. We shall have elections on adult franchise basis for the Federal Legislature. Now if you add to that an enormous Presidential election in which every adult votes in the whole of India, that will be a tremendous affair. In fact even financially it will be difficult to carry out and otherwise also it will upset most activities for a great part of the year. The American Presidential election actually stops many activities for many many months. Now it is not for me to criticise the American system or any other system. Each country evolves the system of its choice. I do think that while there are virtues in the American system, there are great defects in that system. I am not concerned with the United States of America. I am concerned with India at present and I am quite convinced in my mind that if we try to adopt that here, we shall prevent the development of any ministerial form of Government and we shall waste tremendous amount of time and energy. It is said that the American Presidential election helps the forging of unity of the country by concentrating the mind of the entire country on the Presidential election and on the conduct of those elections. One man becomes the symbol of the country. Here also he will be a symbol of the country;

but I think that having that type of election for our President would be a bad thing for us.

Some people suggested, why have even this rather complicated system of election that we have suggested? Why not the Central Legislature by itself elect the President? That will be much simpler, of course, but there is the danger that it will be putting the thing very much on the other side, of having it on too narrow a basis. The Central Legislature may, and probably will be dominated, say, by one party or group which will form the Ministry. If that group elects the President, inevitably they will tend to choose a person of their own party. He will then be even more a dummy than otherwise. The President and the Ministry will represent exactly the same thing. It is possible that even otherwise the President may represent the same group or party or ideas. But we have taken a middle course and asked all the members of all the legislatures all over India, in all the units to become voters. It is just likely that they will be choosing a party man. Always that is possible, of course. Anyway, we may rule out electing the President by the Central Legislature as being on too narrow a basis.

To have it on adult franchise, you must have some kind of electoral college. It has been suggested that we may have some kind of electoral college which will include all manner of people—members of municipalities, district boards and so on. That, I think, will be introducing confusion without doing good to anybody. It will mean a large number of petty elections for making up the electoral college. In the various legislatures you have already a ready-made electoral college—that is, the members of the legislatures all over India. Probably they will number a few thousands. And presumably these members of the legislatures will be in a better position to judge of the merits of the individual in question or the candidates than some other larger electoral college consisting of municipal members and others. So I submit to the House that the method that this Committee has suggested is quite feasible and is the right method to choose a good man who will have authority and dignity in India and abroad.

You will notice that in choosing this method, we have taken care to prevent any weightage in voting, because legislatures, as has been explained, I believe in a note, may not be representative of the population, of the numbers of the population. A province like the United Provinces or Madras may have a provincial legislature of 300 persons representing some 60 or 55 million people—I do not know how many. Another legislature may have 50 members representing some 50,000. It will be rather absurd to give the same weightage and the result will be that a number of very small units in the country will really dominate the scene. Therefore weightage has been disallowed and some formula will have to be worked out carefully to see that voting is according to the population of the units concerned. I beg to move.

Mr. President: We shall take up the amendments to this motion, and resume discussion on this, next day.

Before we depart I would like to make one announcement. We have now the Report of the Union Powers Committee which had been circulated. Members may send in their amendments till day-after tomorrow 5 P.M., *i.e.*, up to Wednesday the 23rd, at 5 P.M. (*Some Honourable Members*: "We have not received the Report"). I understand the Report was circulated long ago, in fact that it has been circulated twice. But if still any member has not received a copy, he may take it now."

Some Honourable Members: We are anxious to know the time-table for the next session. May we put off giving notice of amendments till Thursday evening?

Mr. President: Yes, notice of amendments to Union Powers Committee's Report may be given till 5 P.M. on Thursday, the 24th instant.

The House then adjourned till Ten of the Clock, on Tuesday the 22nd July, 1947.

CONFIDENTIAL

APPENDIX 'A'

No. CA/63/Cons./47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

New Delhi, the 4th July, 1947.

FROM

PANDIT JAWAHARLAL NEHRU,

CHAIRMAN,

UNION CONSTITUTION COMMITTEE

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

SIR,

On behalf of the members of the Committee appointed by the Honourable the President in pursuance of the resolution of the Constituent Assembly of the 30th April, 1947, to report on the principles of the Union Constitution, I have the honour to submit the annexed Memorandum which embodies the recommendations of the Committee together with explanatory notes where necessary.

I have the honour to be,

Sir,

Your most obedient servant,

JAWAHARLAL NEHRU,

CHAIRMAN.

No. CA/63/Cons./47

CONSTITUENT ASSEMBLY OF INDIA

Memorandum on the Indian Constitution

Preamble.—We, the people of India, seeking to promote the common good, do hereby, through our chosen representatives, enact, adopt and give to ourselves this Constitution.

PART I

FEDERAL TERRITORY AND JURISDICTION

1. Name and Territory of Federation.—The Federation hereby established shall be a sovereign independent Republic known as India.

Save as otherwise provided by or under this Constitution or any treaty or agreement, the territories included for the time being in Schedule I shall be subject to the jurisdiction of the Federation.

[NOTE.—The structure proposed to be established by this Constitution being federal in character, the term Federation has been used.]

"India" has been suggested for the name of the State as being the shortest and the most comprehensive.

The words save as otherwise provided by or under...any treaty or agreement" are necessary, because there may be Indian States which, though unfederated and therefore not in the Schedule, may have ceded jurisdiction for certain special purposes by some treaty or agreement.

2. Admission of New Territory.—The Parliament of the Federation may from time to time by Act include new territories in Schedule I upon such terms as it thinks fit.

[*Cf.* Art. IV, Section 3 (1), of the Constitution of the U.S.A. and Section 121 of the Australian Constitution. The power to admit new States is vested in the Congress in the U.S.A. and in the Commonwealth Parliament in Australia.

As a matter of nomenclature it may be explained that in this draft the Legislature of the Federation is referred to as "Parliament"; Unit Legislatures are referred to as "Legislatures". The Federal Parliament consists of the President and a National Assembly comprising two Houses.]

7. Creation of new units and alteration of boundaries of units.—The Parliament of the Federation may by Act, with the consent of the Legislature of every Province and the Legislature of every Indian State affected thereby,—

(a) create a new unit;
(b) increase the area of any unit;
(c) diminish the area of any unit;
(d) alter the boundaries of any unit;

and may with the like consent make such incidental and consequential provisions as it may deem necessary or proper.

[NOTE.—This corresponds to S. 290 of the Act of 1935, but is wider in that it provides for the possibility of Indian State territory being included in a Province.]

SCHEDULE I

TERRITORIES SUBJECT TO THE JURISDICTION OF THE FEDERATION

I. *Governors' Provinces*—

Madras,

Bombay,

West Bengal,

The United Provinces,

Bihar,

East Punjab,

The Central Provinces and Berar,

Assam,

Orissa.

II. *Chief Commissioners' Provinces*—

Delhi,

Ajmer-Merwara,

Coorg,

The Andaman and Nicobar Islands,

Panth Piploda.

III. *Indian States*—

[Here enumerate the acceding or ratifying Indian States:—

(1) Single States.

(2) Groups of States.]

[The Governors' Provinces and the Chief Commissioners' Provinces specified in the Schedule will be automatically within the jurisdiction of the Federation of India. As regards Indian States, some procedure will have to be prescribed for determining which of them are to be included in the Schedule initially. Under the Act of 1935, accession was to be evidenced by "Instruments of Accessor" executed by the Rulers. If it is considered undesirable to use this term or adopt this procedure, some kind of ratification may have to be prescribed.

If any of the Provinces specified in the Schedule should be partitioned before the Constitution comes into operation, the Schedule will have to be amended accordingly.]

*PART II

CITIZENSHIP

1. Citizenship.—At the date of commencement of this Constitution every person domiciled in the territories subject to the jurisdiction of the Federation—

(a) who has been ordinarily resident in those territories for not less than five years immediately preceding that date, or

(b) who, or whose parents, or either of whose parents, was or were born in India,

shall be a citizen of the Federation:

Provided that any such person being a citizen of any other State may, in accordance with Federal law, elect not to accept the citizenship hereby conferred.

Explanation.—For the purposes of this clause—

"Domicile" has the same meaning as in the Indian Succession Act, 1925.

2. After the commencement of this Constitution—

(a) every person who is born in the territories subject to the jurisdiction of the Federation;

(b) every person who is naturalised in accordance with Federal law; and

(c) every person, either of whose parents was, at the time of such person's birth, a citizen of the Federation;

shall be a citizen of the Federation.

3. Further provisions governing the acquisition and termination of Federal citizenship may be made by Federal law.

Explanation.—In this Constitution, unless the context otherwise requires, "Federal law" includes any existing Indian law as in force within the territories subject to the jurisdiction of the Federation.

[NOTE.—The provisions regarding citizenship will doubtless rouse keen controversy. The present draft is merely meant as a basis for discussion. *Cf.* Art 3 of the Constitution of the Irish Free State, 1922, which runs—

"Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland, or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State for not less than seven years, is a citizen of the Irish Free State and shall, within the limits of the jurisdiction of the Irish Free State, enjoy the privileges and be subject to the obligations of such citizenship:

Provided that any such person being a citizen of another State may elect not to accept the citizenship hereby conferred; and the conditions governing the future acquisition and termination of citizenship in the Irish Free State shall be determined by law."

*This part is subject to the decision of the *ad hoc* Committee on Citizenship Clause.

Clause 1 is on the lines of the above provision, except that a period of five years has been substituted for seven years in accordance with S. 3 (1)(c) of the Indian Naturalisation Act, VII of 1926.

The clause has had to be drafted with due regard to the probability that the Federation will not initially exercise jurisdiction over the whole of India.

A person born in India and domiciled in Bombay, who happens to be resident in London at the commencement of the new Constitution, will be a citizen of the Federation under this clause; but not one domiciled in Sind or Baluchistan, if the Federation does not initially exercise jurisdiction there. It is, however, open to any person to acquire a new domicile by taking up his fixed habitation in another area before the Constitution comes into operation.

Under the Indian Succession Act, 1925, every person has a "domicile of origin", which prevails until he acquires a new domicile. Briefly, his domicile of origin is in the country in which at the time of his birth his father was domiciled, and he can acquire a new domicile by taking up his fixed habitation in another country. There is also a provision in the Act enabling any person to acquire a domicile in British India by making and depositing in some office in British India, appointed in this behalf by the Provincial Government, a declaration in writing of his desire to acquire such domicile provided that he has been resident in British India for one year preceding the date of the declaration. Generally speaking, a wife's domicile during her marriage follows the domicile of her husband. If any person who is at present domiciled, say, in Hyderabad, wishes to acquire a domicile, say, in Delhi, before the coming into operation of this Constitution, he can do so either by taking up his fixed habitation in Delhi or by following the procedure prescribed in the above provision of the Indian Succession Act, so that at the date of commencement of the Constitution he will become domiciled "in the territories subject to the jurisdiction of the Federation."

Clauses 2 and 3 follow the provisions suggested by the *ad hoc* Committee; Clause 2 is not necessary, if we are content to leave the matter to Federal law under Clause 3. In this connection, there is much to be said in favour of the view of the Calcutta Weekly Notes:

"It is not possible to define exhaustively the conditions of nationality, whether by birth or naturalisation, by the Constitution. If certain conditions are laid down by the Constitution, difficulties may arise regarding the interpretation of future legislation which may appear to be contrary to or to depart in any way from them. For example, the draft of the nationality clause placed before the Constituent Assembly lays down that any person born in the Union would be a citizen of the Union. But what about a woman citizen of the Union marrying an alien national or about an alien woman marrying a Union national? Would the Union Legislature have power to legislate in the first case that the woman would lose her Union

nationality or in the second case that she would acquire Union nationality (such being the law of most of the countries)? These are intriguing questions, but all these things have to be pondered before a rigid clause is inserted in the Constitution itself. It would, in our opinion, therefore, be better to specify who would be citizens of the Union at the date when the Constitution comes into force as in the Constitution of the Irish Free State and leave the law regarding nationality to be provided for by legislation by the Indian Union in accordance with the accepted principles of Private International Law." (Calcutta Weekly Notes, Vol. LI, No. 27, May 26, 1947).

The same journal in two subsequent issues (Vol. LI, Nos. 28 and 29, June 2, and June 9, 1947) has drawn attention to a host of other questions arising out of Clause 2 and on the whole it may be better altogether to omit that clause, leaving the matter at large to be regulated by Federal law under Clause 3.]

PART III

FUNDAMENTAL RIGHTS INCLUDING DIRECTIVE PRINCIPLES OF STATE POLICY

1. **Fundamental Rights.**—[Here enumerate the Fundamental rights and principles of State policy as passed by the Constituent Assembly.]

PART IV

CHAPTER I

THE FEDERAL EXECUTIVE

1. **Head of the Federation.**—(1) The Head of the Federation shall be the President (Rashtrapati) to be elected as provided below.

(2) The election shall be by an electoral college consisting of—

(a) the members of both Houses of Parliament of the Federation, and

(b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof.

In order to secure uniformity in the scale of representation of the Units, the votes of the Unit Legislatures shall be weighted in proportion to the population of the Units concerned.

Explanation.—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States, a Unit means the group so formed and the Legislature of the Unit means the Legislatures of all the States in that group.

(3) The election of the President shall be by secret ballot and on the system of proportional representation by means of the single transferable vote.

(4) Subject to the above provisions, elections for the office of President shall be regulated by Act of Federal Parliament.

[NOTE.—The provision about weighting of the votes according to the population of the Units is necessary to prevent the swamping of the votes of a large Unit by those of a much smaller Unit which may happen to have a relatively large Legislature. The mode of weighting may be illustrated thus: In a Legislature where each legislator represents 1 lakh (100,000) of the population, his vote shall count as equivalent to 100, that is, 1 for each 1,000 of the population; and where the Legislature is such that the legislator represents 10,000 of the population, his vote shall count as equivalent to 10 on the same scale.]

2. Term of office of President.—(1) The President shall hold office for 5 years:

Provided that—

(a) a President may by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People resign his office;

(b) a President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in sub-clause (2).

(2) (a) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of the Federal Parliament, but no proposal to prefer such charge shall be adopted by that House except upon a resolution of the House supported by not less than two-thirds of the total membership of the House.

(b) When a charge has been so preferred by either House of the Federal Parliament the other House shall investigate the charge or cause the charges to be investigated and the President shall have the right to appear and to be represented at such investigation.

(c) If as a result of the investigation a resolution is passed supported by not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated declaring that the charge preferred against the President has been sustained, the resolution shall have the effect of removing the President from his office as from the date of the resolution.

(3) A person who holds, or who has held, office as President shall be eligible for re-election once, but only once.

[NOTE.—Sub-clauses (1)(b) and (2) follow Art. 12(10) of the Irish Constitution; sub-clause (3) is also taken from the Irish Constitution.]

3. Age qualification.—Every citizen of the Federation who has completed the age of thirty-five years and is qualified for election as a member of the House of the People shall be eligible for election as President.

[NOTE.—This follows Art. II, Section 1(5), of the Constitution of the U.S.A. and Article 12(4) of the Irish Constitution.]

4. Conditions of President's office.—(1) The President shall not be a member of either House of the Federal Parliament and if a member of either House be elected President, he shall be deemed to have vacated his seat in that House.

(2) The President shall not hold any other office position of emolument.

(3) The President shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Federal Parliament and until then, such as are prescribed in Schedule————

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

[NOTE.—These follow the provisions of Articles 12(6) and (11) of the Irish Constitution.]

5. Casual vacancies and procedure at elections.—Appropriate provision should be made for elections to fill casual vacancies, the detailed procedure for all elections, whether casual or not, being left to be regulated by Act of the Federal Parliament:

Provided that—

(a) an election to fill a casual vacancy shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and

(b) the person elected as President at an election to fill a casual vacancy shall be entitled to hold office for the full term of five years.

6. Vice-President.—(1) In the event of the absence of the President or of his death, resignation removal from office, or incapacity or failure to exercise and perform the powers and functions of his office or at any time at which the office of the President may be vacant, his functions shall be discharged by the Vice-President pending the resumption by the President of his duties or the election of a new President, as the case may be.

(2) The Vice-President shall be elected by both Houses of the Federal Parliament in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President of the Council of States.

(3) The Vice-President shall hold office for five years.

7. Functions of the President.—(1) Subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President.

(2) Without prejudice to the generality of the foregoing provision—

(a) the supreme command of the defence forces of the Federation shall be vested in the President;

(b) the right of pardon and the power to commute or to remit punishment imposed by any court exercising criminal jurisdiction shall be vested in the President, *but such power of commutation or remission may also be conferred by law on other authorities.*

[NOTE.—The italicised words in sub-clause 2(b) are necessary, because of the provisions of the Criminal Procedure Code, which, in this respect, will probably continue to be in force even after the commencement of the new Constitution. Similar limiting words occur in the Irish Constitution also.]

8. Extent of executive authority of the Federation.—Subject to the provisions of this Constitution, the executive authority of the Federation shall extend to the matters with respect to which the Federal Parliament has power to make laws and to any other matters with respect to which authority has been conferred on the Federation by any treaty or agreement, and shall be exercised either through its own agency or through the Units.

9. The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects, until otherwise provided by the appropriate Federal authority.

[NOTE.—Like the corresponding provision in section 8(2) of the Act of 1935, this clause gives the Rulers of Indian States, who have acceded to the Federation, concurrent executive power even in Federal subjects, until otherwise provided by Federal authority. (In this respect, the position of the Provincial units is rather different: these have no executive power in respect of Federal subjects save as given by Federal law.) Such a clause is necessary, for, otherwise, all statutory powers in respect of Federal subjects will come to an end in the acceding States upon the commencement of this Constitution.]

10. Council of Ministers.—There shall be a council of ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions.

11. Advocate-General for the Federation.—The President shall appoint a person, being one qualified to be appointed a judge of the Supreme Court, to be Advocate-General for the Federation, to give advice to the Federal Government upon legal matters that may be referred to him.

12. Conduct of business of the Federal Government.—All executive action of the Federal Government shall be expressed to be taken in the name of the President.

CHAPTER II

THE FEDERAL PARLIAMENT

13. Constitution of the Federal Parliament.—The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and the National Assembly, comprising two Houses, the Council of States and the House of the People.

14. (1) (a) The Council of States shall consist of—

(i) not more than 10 members nominated by the President in consultation with universities and scientific bodies;

(ii) representatives of the Units on the scale of one representative for every whole million of the population of the Unit up to five million *plus* one representative for every additional two millions of the population, subject to a total maximum of 20.

Explanation.—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States, a Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the members of the Lower House of the Legislature of such Unit.

(c) The House of the People shall consist of representatives of the people of the territories of the Federation in the proportion of not less than 1 representative for every million of the population and not more than 1 representative for every 750,000 of the population.

(d) The ratio between the number of members to be elected at any time for each constituency and the population of that constituency, as ascertained at the last preceding census shall, as far as practicable, be the same throughout the territories of the Federation.

(2) The said representatives shall be chosen in accordance with the provisions in that behalf contained in Schedule :

Provided that the elections to the House of the People shall be on the basis of adult suffrage.

(3) Upon the completion of each decennial census, the representation of the several Provinces and Indian States or groups of Indian States in the two Houses shall be readjusted by such authority, in such manner, and from such time as the Federal Parliament may by Act determine.

(4) The Council of States shall be a permanent body not subject to dissolution, but, as near as may be, one-third of the members thereof shall retire in every second year in accordance with the provisions in that behalf contained in Schedule——.

(5) The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer, and the expiration of the said period of four years shall operate as a dissolution of the House :

Provided that the said period may, during an emergency, be extended by the President for a period not exceeding one year at a time and

not exceeding in any case beyond the period of six months from the expiry of the period of the emergency.

[NOTE.—Taking into account only the "willing" Provinces, this clause gives the Council of States a maximum strength of about 200 members and the House of the People a maximum strength of between 300 and 400 members. The following tabular statement will serve to give a general picture of the composition of the Upper House under the above scheme. (The composition of the Lower House will be on a purely population basis.)

COUNCIL OF STATES

Provinces

Madras	20
Bombay	12
Bengal (W)	12
U. P.	20
Punjab (E)	9
Bihar	20
C. P.	10
Assam	7
Orissa	6
Total	116

States

Hyderabad	10
Mysore	6
Travancore	5
Baroda	3
Gwalior	4
Jaipur	3
Kashmir	4
Jodhpur	2
Udaipur	2
Patiala	2
Rewa	2
Cochin	1
Bikener	1
Kolhapur	1
Indore	1
	47
For the groups of the remaining States whose population individually does not amount to one million	24
Total	71

15. There should be the usual provisions for the summoning prorogation and dissolution of Parliament, for regulating the relations between the two Houses, the mode of voting, privileges of members, disqualification for membership, Parliamentary procedure, including procedure in financial matters. In particular, money Bills must originate in the Lower House. The Upper House should have power to suggest amendments in money Bills; the Lower House would consider them and thereafter, whether they accept the amendments or not, the Bill as amended (where the amendments are accepted) or in

its original form (where the amendments are not accepted) shall be presented to the President for assent and, upon his assent, shall become law. If there is any difference of opinion as to whether a Bill is a money Bill or not, the decision of the Speaker of the House of the People should be final. Except in the case of money Bills both the Houses should have equal powers of legislation and deadlocks should be resolved by joint meetings of the two Houses. The President should have the power of returning Bills which have been passed by the National Assembly for reconsideration within a period of six months.

16. Language.—In the Federal Parliament, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman or the Speaker, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue. The Chairman or the Speaker, as the case may be, shall make arrangements for giving the House, whenever he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

[NOTE.—This follows the corresponding provision in the Constituent Assembly Rules.]

CHAPTER III

LEGISLATIVE POWERS OF THE PRESIDENT

17. Power of President to promulgate ordinances during recess of Parliament.—(1) If at any time when the Federal Parliament is not in session the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament assented to by the President, but every such ordinance—

(a) shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the reassembly of the Federal Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

(3) If and so far as an ordinance under this section makes any provision which the Federal Parliament would not under this Constitution be competent to enact, it shall be void.

[NOTE.—The ordinance-making power has been the subject of great criticism under the present Constitution. It must however be pointed out that circumstances may exist where the immediate promulgation of a law is absolutely necessary and there is no time in which to sommon the Federal Parliament. In 1925, Lord Reading found it necessary to make an ordinance suspending the cotton excise duty when such

action was immediately and imperatively required in the interests of the country. A democratically elected President who has moreover to act on the advice of ministers responsible to Parliament is not at all likely to abuse any ordinance-making power with which he may be invested. Hence the proposed provision.]

CHAPTER IV

THE FEDERAL JUDICATURE

18. Supreme Court.—There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary, except that a judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also such judges of the High Courts as may be necessary for the purpose.

[NOTE.—The *ad hoc* Committee* on the Supreme Court has observed that it will not be expedient to leave the power of appointing judges of the Supreme Court to the unfettered discretion of the President of the Federation. They have suggested two alternatives, both of which involve the setting up of a special panel of eleven members. According to one alternative, the President, in consultation with the Chief Justice, is to nominate a person for appointment as puisne judge and the nomination has to be confirmed by at least seven members of the panel. According to the other alternative, the panel should recommend three names, out of which the President, in consultation with the Chief Justice, is to select one for the appointment. The provision suggested in the above clause follows the decision of the Union Constitution Committee.]

CHAPTER V

AUDITOR-GENERAL OF THE FEDERATION

19. Auditor-General.—There shall be an Auditor-General of the Federation who shall be appointed by the President and shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court.

20. Functions of Auditor-General.—The duties and powers of the Auditor-General shall follow the lines of the corresponding provisions in the Act of 1935.

CHAPTER VI

SERVICES

21. Public Service Commission.—There shall be a Public Service Commission for the Federation whose composition and functions shall follow the lines of the corresponding provisions in the Act of 1935, except that the appointment of the Chairman and the members of the Commission shall be made by the President on the advice of his ministers.

22. Provision should be made for the creation of All-India Services whose recruitment and conditions of service will be regulated by Federal law.

*For Committee's Report see Appendix

CHAPTER VII

ELECTIONS

23. Elections to the Federal Parliament.—Subject to the provisions of this Constitution, the Federal Parliament may, from time to time, make provision with respect to all matters relating to or connected with elections to either House of the Federal Legislature including the delimitation of constituencies.

24. Superintendence, direction and control of elections.—The superintendence, direction and control of all elections, whether Federal or Provincial, held under this Constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President.

PART V

DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE FEDERATION AND THE UNITS

The provisions to be inserted under this head will depend upon the decisions that may be taken upon the report of the Union Powers Committee. The Union Constitution Committee has, however, decided that—

(1) the Constitution should be a Federal structure with a strong Centre;

(2) there should be three exhaustive legislative lists, *viz.*, Federal, Provincial and Concurrent, with residuary powers to the Centre;

(3) the States should be on a par with the Provinces as regards the Federal Legislative list subject to the consideration of any special matter which may be raised when the lists have been fully prepared.

PART VI

ADMINISTRATIVE RELATIONS BETWEEN THE FEDERATION AND THE UNITS

1. The Federal Parliament in legislating for an exclusively Federal subject may devolve upon the Government of a Unit, whether a Province, an Indian State or other area, or upon any officer of that Government, the exercise on behalf of the Federal Government of any functions in relation to that subject.

2. (1) It will be the duty of the government of a Unit so to exercise its executive power and authority in so far as it is necessary and applicable for the purpose as to secure that due effect is given within the Unit to every Act of the Federal Parliament which applies to that Unit; and the authority of the Federal Government will extend to the giving of directions to a Unit Government to that end.

(2) The authority of the Federal Government will also extend to the giving of directions to the Unit Government as to the manner in which the latter's executive power and authority should be exercised in relation to any matter which affects the administration of a *Federal subject.

[NOTE.—*Cf.* Sections 122, 124 and 126 of the Government of India Act, 1935.]

PART VII

FINANCE AND BORROWING POWERS

1. Revenues derived from sources in respect of which the Federal Parliament has exclusive power to make laws will be allocated as Federal revenues, but in the cases specified in the next succeeding paragraph the Federation will be empowered or required to make assignments to Units from Federal revenues.

2. Provision should be made for the levy and, if necessary, distribution of the following taxes, *viz.*, customs, Federal excises, export duties, death duties and taxes on income other than agricultural income and taxes on companies.

3. The Federal Government will have power to make subventions or grants out of Federal revenues for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws.

4. The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues subject to such limitations and conditions as may be fixed by Federal law.

5. The Federal Government will have power to grant a loan to, or guarantee a loan by, any Unit of the Federation on such terms and under such conditions as it may prescribe.

[NOTE.—*Cf.* Sections 136 to 140, 162 and 163 (2) of the Government of India Act, 1935.]

PART VIII

DIRECTLY ADMINISTERED AREAS

1. The Chief Commissioners' Provinces should continue to be administered by the Centre as under the Government of India Act, 1935, as an interim measure, the question of any change in the system being considered subsequently, and all centrally administered areas including the Andamans and the Nicobar Islands should be specifically mentioned in the Constitution.

2. Appropriate provision should be made in the Constitution for the administration of tribal areas.

[Note.—The provision to be made regarding tribal areas should incorporate the scheme for the administration of such areas as approved by the Constituent Assembly on the report of the Advisory Committee.]

PART IX

MISCELLANEOUS

The provisions for the protection of minorities as approved by the Constituent Assembly on the report of the Advisory Committee should be incorporated in the Constitution.

PART X

AMENDMENT OF THE CONSTITUTION

An amendment to the Constitution may be initiated in either House of the Federal Parliament and when the proposed amendment is passed in each House by a majority of not less than two-thirds of the members of that House present and voting and is ratified by the legislatures of not less than one half of the Units of the Federation, it shall be presented to the President for his assent; and upon such assent being given, the amendment shall come into operation.

Explanation.—"Unit" in this clause has the same meaning as in Clause 14 of Part IV. Where a Unit consists of a group of States, a proposed amendment shall be deemed to be ratified by the legislature of the Unit, if it is ratified by the majority of the legislatures of the States in the Group.

PART XI

TRANSITIONAL PROVISIONS

1. The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as regards all property, assets, rights and liabilities.

[If, before the commencement of this Constitution, two successor Governments should be set up in India, this clause may have to be amended, inasmuch as there may be a division of assets and liabilities.]

2. (1) Subject to this Constitution, the laws in force in the territories of the Federation immediately before the commencement of the Constitution shall continue in force therein until altered, or repealed, or amended by a competent legislature or other competent authority.

(2) The President may by Order provide that as from a specified date any law in force in the Provinces shall, until repealed or amended by competent authority, have effect subject to such adaptations and modifications as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution.

3. Until the Supreme Court is duly constituted under this Constitution, the Federal Court shall be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court:

Provided that all cases pending before the Federal Court and the Judicial Committee of the Privy Council at the date of commencement of this Constitution may be disposed of as if this Constitution had not come into operation.

4. Excepting holders of the offices specified in Schedule—every person who, immediately before the date of the commencement of this Constitution, was in the service of the Crown in India, including any judge of the Federal Court or of any High Court, shall, on that date be transferred to the appropriate service of the Federation or the Unit concerned and shall hold office by a tenure corresponding to his previous tenure.

[NOTE.—Under the next succeeding clause there will be a provisional President from the commencement of the new Constitution, so that there will be no room for a Governor-General. Similarly, in the Provinces there will be no room for any Governor appointed by His Majesty. The same may be true of the holders of certain other offices. All such offices may be enumerated in a Schedule. The proposed provision applies to persons holding offices other than those mentioned in the Schedule. *Cf.* Article 77 of the Transitory Provisions of the Constitution of the Irish Free State, 1922, reproduced below:—

"Every existing officer of the Provisional Government at the date of the coming into operation of this Constitution (not being an officer whose services have been lent by the British Government to the Provisional Government) shall on that date be transferred to and become an officer of the Irish Free State (Saorstat Eireann), and shall hold office by a tenure corresponding to his previous tenure."]

5. (1) Until both the Houses of the National Assembly have been duly constituted and summoned under this Constitution, the Constituent Assembly shall itself exercise all the powers and discharge all the duties of both the Houses.

Explanation.—For the purposes of this sub-clause, the Constituent Assembly shall not include any members representing territories not included in Schedule I.

(2) Such person as the Constituent Assembly shall have elected in this behalf shall be the provisional President of the Federation until a President has been elected as provided in Part IV of this Constitution.

(3) Such persons as shall have been appointed in this behalf by the provisional President shall be the provisional council of ministers until ministers are duly appointed as provided in Part IV of this Constitution.

[NOTE.—It is essential that on the date of commencement of this Constitution there should be a Legislature and an Executive ready to take over power. The most practicable course is that the Constituent Assembly should itself be the provisional Legislature. The clause regarding the provisional Executive is consequential. These provisions may however require modification after the passing of the new Dominion Act amending the Government of India Act, 1935.]

6. As there may be unforeseen difficulties during the transitional period, there should be a clause in the Constitution on the following lines:—

The Federal Parliament may, notwithstanding anything contained in Part X, by Act—

(a) direct that this Constitution, except the provisions of the said Part and of this clause, shall, during such period,

if any, as may be specified in the Act, have effect subject to such adaptations and modifications as may be so specified;

(b) make such other provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Act.

No Act shall be made under this clause after the expiration of three years from the commencement of this Constitution."

[NOTE.—The-removal-of-difficulties-clause is now quite usual: see, for example, section 310 of the Government of India Act, 1935. The period of three years has been borrowed from Article 51 of the Irish Constitution. This clause will make the process of amendment comparatively easy during the first three years.]

CONSTITUENT ASSEMBLY

Ad hoc Committee on Supreme Court

We, the undersigned, members of the Committee appointed to consider the constitution and powers of the Supreme Court have the honour to submit this our report.

2. We considered the question under the following heads:

I. Jurisdiction and powers of the Supreme Court.
II. Advisory jurisdiction of the Court.
III. Ancillary powers of the Court.
IV. Constitution and strength of the Court.
V. Qualifications and mode of appointment of judges.
VI. Tenure of office and conditions of service of judges.

I. JURISDICTION AND POWERS OF THE SUPREME COURT

3. A Supreme Court with jurisdiction to decide upon the constitutional validity of acts and laws can be regarded as a necessary implication of any federal scheme. This jurisdiction need not however belong exclusively to the Supreme Court. Even under the existing Indian Constitution, the question of the validity of acts and laws is permitted to be raised in any court whenever that question arises in a litigation before that court.

4. A Supreme Court for certain purposes being thus a necessity, we consider that the Court may well be given the following additional powers under the new Indian Constitution:—

(a) *Exclusive jurisdiction in disputes between the Union and a Unit or between one Unit and another*

5. The Supreme Court is the best available *forum* for the adjudication of such disputes, and its jurisdiction should be exclusive.

(b) *Jurisdiction with respect to matters arising out of treaties made by the Union*

6. The treaty-making power belongs to the Union as part of the subject of 'Foreign Affairs'. It would therefore be appropriate to

invest the Supreme Court of the Union with jurisdiction to decide finally, though not necessarily in the first instance, upon all matters arising out of treaties including extradition between the Union and a foreign State. At this stage we do not deal with inter-unit extradition, because this will depend upon the ultimate distribution of powers between the Union and the Units.

(c) *Jurisdiction in respect of such other matters within the competence of the Union as the Union Legislature may prescribe*

7. If the Union Legislature is competent to legislate on a certain matter, it is obviously competent to confer judicial power in respect of that matter on a tribunal of its own choice; and if it chooses the Supreme Court for the purpose, the Court will have the jurisdiction so conferred.

(d) *Jurisdiction for the purpose of enforcing the fundamental rights guaranteed by the Constitution*

8. Clause 22 of the draft the Fundamental Rights provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed. We think however, that it is undesirable to make the jurisdiction of the Supreme Court in such matters exclusive. The citizen will practically be denied these fundamental rights if, whenever they are violated, he is compelled to seek the assistance of the Supreme Court as the only Court from which he can obtain redress. Where there is no other Court with the necessary jurisdiction, the Supreme Court should have it; where there is some other Court with the necessary jurisdiction, the Supreme Court should have appellate jurisdiction, including powers of revision.

(e) *General appellate jurisdiction similar to that now exercised by the Privy Council*

9. Under the new Constitution the jurisdiction of the Privy Council as the ultimate appellate authority will disappear and it is obviously desirable that a similar jurisdiction should now be conferred on the Supreme Court. So far as the British Indian Units are concerned, this jurisdiction should be co-extensive with the present jurisdiction of the Privy Council. As regards the Indian State units, there are at least two classes of cases where, in the interests of uniformity, it is clearly desirable that the final decision should rest with the Supreme Court, namely :

(1) cases involving the interpretation of a law of the Union, and

(2) cases involving the interpretation of a law of a Unit other than the State concerned.

Sir B. L. Mitter suggests that such uniformity can be obtained either by invoking the appellate authority of the Supreme Court or by a reference of the particular issue to the Supreme Court. Cases involving the constitutional validity of a law of the Union or of any Unit have already been dealt with; they will all necessarily fall within the Supreme Court's jurisdiction.

10. It will also, of course, be open to any Indian State Unit to confer by special agreement additional jurisdiction upon the Supreme Court in respect of such matters as may be specified therein.

II. ADVISORY JURISDICTION OF THE COURT

11. There has been considerable difference of opinion amongst jurists and political thinkers as to the expediency of placing on the Supreme Court an obligation to advise the Head of the State on difficult questions of law. In spite of arguments to the contrary, it was considered expedient to confer advisory jurisdiction upon the Federal Court under the existing Constitution by Section 213 of the Act. Having given our best consideration to the arguments pro and con, we feel that it will be on the whole better to continue this jurisdiction even under the new Constitution. It may be assumed that such jurisdiction is scarcely likely to be unnecessarily invoked and if, as we propose, the Court is to have a strength of ten or eleven judges, a pronouncement by a full Court may well be regarded as authoritative advice. This can be ensured by requiring that references to the Supreme Court for advice shall be dealt with by a full Court.

III. ANCILLARY POWERS OF THE COURT

12. Power should be conferred upon the Supreme Court as under section 214 of the Act of 1935 to make rules of procedure to regulate its work and provisions similar to those contained in Order 45 of the Civil Procedure Code should be made available so as to facilitate the preparation of the record in appeals to the Supreme Court as well as the execution of its decrees. It does not seem to us necessary to continue the restriction now placed on the Federal Court by section 209 of the Act of 1935. If the Supreme Court takes the place of the Privy Council, it may well be permitted to pronounce final judgments and final decrees in cases where this is possible or to remit the matter for further inquiry to the Courts from which the appeal has been preferred where such further inquiry is considered necessary. Provision must also be made on the lines of section 210 of the Act of 1935 giving certain inherent powers to the Supreme Court.

IV. CONSTITUTION AND STRENGTH OF THE COURT

13. We think that the Supreme Court will require at least two Division Benches and as we think that each Division Bench should consist of five judges, the Court will require ten judges in addition to the Chief Justice, so as to provide for possible absences or other unforeseen circumstances. Moreover, one of the judges may be required to deal with many miscellaneous matters incidental to appellate jurisdiction (including revisional and referential jurisdiction).

V. QUALIFICATIONS AND MODE OF APPOINTMENT OF JUDGES

14. The qualifications of the judges of the Supreme Court may be laid down on terms very similar to those in the Act of 1935 as regards the judges of the Federal Court, the possibility being borne in mind (as in the Act of 1935) that judges of the superior courts even from the States which may join the Union may be found fit to occupy a seat in the Supreme Court. We do not think that it will be expedient

to leave the power of appointing judges of the Supreme Court to the unfettered discretion of the President of the Union. We recommend that either of the following methods may be adopted. One method is that the President should in consultation with the Chief Justice of the Supreme Court (so far as the appointment of puisne judges is concerned) nominate a person whom he considers fit to be appointed to the Supreme Court and the nomination should be confirmed by a majority of at least 7 out of a panel of 11, composed of some of the Chief Justices of the High Courts of the constituent units, some members of both the Houses of the Central Legislature and some of the law officers of the Union. The other method is that the panel of 11 should recommend three names out of which the President, in consultation with the Chief Justice, may select a judge for the appointment. The same procedure should be followed for the appointment of the Chief Justice except, of course, that in this case there will be no consultation with the Chief Justice. To ensure that the panel will be both independent and command confidence the panel should not be an *ad hoc* body but must be one appointed for a term of years.

VI. Tenure of Office and Conditions of Service of Judges

15. The tenure of office of the judges of the Supreme Court will be the same as that of Federal Court judges under the present Constitution Act and their age of retirement also may be the same (65). Their salary and pensions may be provided for by statutory rules. It is undesirable to have temporary judges in the highest Court in the land. Instead of having temporary judges, the system of having some *ad hoc* judges out of a panel of Chief Justices or judges of the High Courts may be adopted. In this connection we invite attention to the Canadian practice as embodied in section 30 of the Canadian Supreme Court Act. The section runs as follows:—

"30. *Appointment of ad hoc judge.*—If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the Court, owing to a vacancy or vacancies, or to the absence through illness or on leave or in the discharge of other duties assigned by statute or order in council, or to the disqualification of a judge or judges, the Chief Justice, or, in his absence, the senior puisne judge, may in writing request the attendance at the sittings of the Court, as an *ad hoc* judge, for such period as may be necessary, of a judge of the Exchequer Court, or, should the judges of the said court be absent from Ottawa or for any reason unable to sit, of a judge of a provincial superior court to be designated in writing by the Chief Justice or in his absence by any Acting Chief Justice or the senior puisne judge of such provincial court upon such request being made to him in writing.

* * * * *

4. *Duties.*—It shall be the duty of the judge whose attendance has been so requested or who has been so designated in priority to other duties of his office, to attend the sittings of the Supreme Court at the

time and for the period for which his attendance shall be required, and while so attending he shall possess the powers and privileges and shall discharge the duties of a puisne judge of the Supreme Court".

16. Not all the recommendations that we have made need find a place in the Constitution Act. The main features may be embodied in the Constitution Act and detailed provisions in a separate Judiciary Act to be passed by the Union Legislature. The form of procedure in the Supreme Court, *e.g.* for the enforcement of fundamental rignts may also be provided for in the Judiciary Act. We may point out that the prerogative writs of mandamus, prohibition and certiorari have been abolished in England by a statute of 1938. Corresponding orders have been substituted and the Supreme Court of Judicature has been empowered to make rules of court prescribing the procedure in cases where such orders are sought. [See sections 7-10 of the Administration of Justice (Miscellaneous Provisions) Act, 1938].

17. We understand our terms of reference to relate only to the constitution and powers of the Supreme Court. We have, therefore, said nothing about the High Courts of the Units, although we have had to refer to them incidentally in some of our suggestions relating to the Supreme Court.

1. S. Varadachariar.
2. A. Krishnaswami Ayyar.
3. B. L. Mitter.
4. K. M. Munshi.
5. B. N. Rau.

New Delhi, May 21, 1947.

CONFIDENTIAL.

APPENDIX 'B'

No. CA/63/Cons./47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

New Delhi, the 13th July 1947.

FROM

PANDIT JAWAHARLAL NEHRU,

CHAIRMAN, UNION CONSTITUTION COMMITTEE.

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

DEAR SIR,

1. On behalf of the members of the Committee appointed by you in pursuance of the resolution of the Constituent Assembly of the 30th April, 1947, I submitted a memorandum embodying the recommendations of the Committee.

2. The Committee met again on the 12th July 1947, and decided on certain modifications to be made in the said memorandum. I have the honour to submit this supplementary report containing these recommendations.

3. In the opinion of the Committee, clause 3 of the memorandum should contain the following additional sub-clause to enable the Federal Parliament to alter the name of any Unit, namely :—

"(e) alter the name of any Unit."

4. The Committee is of opinion that the following should be added to sub-clause (2) of clause 6 of Chapter I of Part IV of the memorandum to make it clear that if a member of the Council of States is elected as Vice-President he shall vacate his seat as such member, namely :—

"and if a member of the Federal Parliament is elected to be the Vice-President, he shall vacate his seat as such member".

5. The Committee is further of the opinion that Part X of the memorandum on the Indian Constitution should be replaced by the following :—

PART X

AMENDMENT OF THE CONSTITUTION

The amendment of the Constitution may be initiated in either House of the Federal Parliament and when the proposed amendment is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent; and upon such assent being given the amendment shall come into operation :

Provided that if such amendment is in respect of any provision of the Constitution relating to all or any of the following matters, namely :—

(a) any change in the Federal Legislative List,

(b) representation of Units in the Federal Parliament, and

(c) powers of the Supreme Court,

it will also require to be ratified by the legislatures of Units representing a majority of the population of all the Units of the Federation in which Units representing at least one-third of the population of the Federated States are included.

Explanation.—"Unit" in this clause has the same meaning as in Clause 14 of Part IV. Where a Unit consists of a group of States, a proposed amendment shall be deemed to be ratified by the legislature of the Unit, if it is ratified by the majority of the legislatures of the States in the Group."

Yours sincerely,
JAWAHARLAL NEHRU.

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Volume IV
No. 7



Tuesday
22nd July
1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 22nd July 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 the Register:

Mr. Jai Sukh Lal Hathi (Residuary States Group).

Mr. Ram Narayan Singh (Bihar: General): Sir, I wish to draw your attention to a very important constitutional issue. I think, and everybody knows, that we are meeting as a sovereign body here and making the constitution for a future Free India. But in the envelopes used by the Assembly Office we still find on the top the words 'On His Majesty's Service'. I think this is not proper and I draw the attention of the House and yourself to this matter. I hope these words will be dropped from the envelopes in future in the correspondence conducted by the Assembly Office.

RESOLUTION *RE* NATIONAL FLAG

Mr. President: We shall proceed with the agenda. The first item on the agenda is a Motion by Pandit Jawaharlal Nehru about the Flag.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Mr. President, it is my proud privilege to move the following Resolution:

"Resolved that the National Flag of India shall be a horizontal tricolour of deep Saffron (Kesari), white and dark green in equal proportion. In the centre of the white band, there shall be a Wheel in navy blue to represent the *Charkha*. The design of the Wheel shall be that of the Wheel. (*Chakra*) which appears on the abacus of the Sarnath Lion Capital of Asoka.

The diameter of the Wheel shall approximate to the width of the white band.

The ratio of the width to the length of the Flag shall ordinarily be 2:3."

This Resolution, Sir, is in simple language, in a slightly technical language, and there is no glow or warmth in the words that I have read. Yet I am sure that many in this House will feel that glow and

[Honourable Pandit Jawaharlal Nehru]

warmth which I feel at the present moment for behind this Resolution and the Flag which I have the honour to present to this House for adoption lies history, the concentrated history of a short span in a nation's existence. Nevertheless, sometimes in a brief period we pass through the track of centuries. It is not so much the mere act of living that counts but what one does in this brief life that is ours; it is not so much the mere existence of a nation that counts but what that nation does during the various periods of its existence; and I do venture to claim that in the past quarter of a century or so India has lived and acted in a concentrated way and the emotions which have filled the people of India represent not merely a brief spell of years but something infinitely more. They have gone down into history and tradition and have added themselves on to that vast history and tradition which is our heritage in this country. So, when I move this Resolution, I think of this concentrated history through which all of us have passed during the last quarter of a century. Memories crowd in upon me. I remember the ups and downs of the great struggle for freedom of this great nation. I remember, and many in this House will remember how we looked up to this Flag not only with pride and enthusiasm but with a tingling in our veins; also how, when we were sometimes down and out, then again the sight of this Flag gave us courage to go on. Then, many who are not present here today, many of our comrades who have passed, held on to this Flag, some amongst them even unto death, and handed it over as they sank, to others to hold it aloft. So, in this simple form of words, there is much more than will be clear on the surface. There is the struggle of the people for freedom with all its ups and downs and trials and disasters and there is, finally today as I move this Resolution, a certain triumph about it—a measure of triumph in the conclusion of that struggle.

Now, I realise fully, as this House must realise, that this triumph of ours has been marred in many ways. There have been, especially in the past few months, many happenings which cause us sorrow, which has gripped our hearts. We have seen parts of this dear motherland of ours cut off from the rest. We have seen large numbers of people suffering tremendously, large numbers wandering about like waifs and strays, without a home. We have seen many other things which I need not repeat to this House, but which we cannot forget. All this sorrow has dogged our footsteps. Even when we have achieved victory and triumph, it still dogs us and we have tremendous problems to face in the present and in the future. Nevertheless it is true I think—I hold it to be true—that this moment does represent a triumph and a victorious conclusion of all our struggles, for the moment. *(Hear, hear.)*

There has been a very great deal of bewailing and moaning about various things that have happened. I am sad, all of us are sad at heart because of those things. But let us distinguish that from the other fact of triumph, because there is triumph in victory, in what has happened. It is no small thing that that great and mighty empire which has represented imperialist domination in this country has decided to end its days here. That was the objective we aimed at.

We have attained that objective or shall attain it very soon. Of that there is no doubt. We have not attained the objective exactly in the form in which we wanted it. The troubles and other things that accompanied our achievement are not to our liking. But we must remember that it is very seldom that people realise the dreams that they have dreamt. It is very seldom that the aims and objectives with which we start are achieved in their entirety in life, in an individual's life or in a nation's life.

We have many examples before us. We need not go into the distant past. We have examples in the present or in the recent past. Some years back, a great war was waged, a world war bringing terrible misery to mankind. That war was meant for freedom and democracy and the rest. That war ended in the triumph of those who said they stood for freedom and democracy. Yet, hardly had that war ended, when there were rumours of fresh wars and fresh conflicts.

Three days ago, this House and this country and the world was shocked by the brutal murder in a neighbouring country of the leaders of the nation. Today one reads in the papers of an attack by an imperialist power on a friendly country in South-East Asia. Freedom is still far off in this world and nations, all nations in greater or lesser degree, are struggling for their freedom. If we in the present have not exactly achieved what we aimed at, it is not surprising. There is nothing in it to be ashamed of. For I do think our achievement is no small achievement. It is a very considerable achievement, a great achievement. Let no man run it down because other things have happened which are not to our liking. Let us keep these two things apart. Look at any country in the wide world. Where is the country today, including the great and big powers, which is not full of terrible problems, which is not in some way, politically and economically, striving for freedom which somehow or other eludes its grasp? The problems of India in this wider context do not appear to be terrible. The problems are not anything new to us. We have faced many disagreeable things in the past. We have not held back. We shall face all the other disagreeable things that face us in the present or may do so in the future and we shall not flinch and we shall not falter and we shall not quit. (*Loud applause.*)

So, in spite of everything that surrounds us, it is in no spirit of downheartedness that I stand up in praise of this Nation for what it has achieved. (*Renewed cheers.*) It is right and proper that at this moment we should adopt the symbols of this achievement, the symbol of freedom. Now what is this freedom in its entirety and for all humanity? What is freedom and what is the struggle for freedom and when does it end? As soon as you take one step forward and achieve something, further steps come up before you. There will be no full freedom in this country or in the world as long as a single human being is un-free. There will be no complete freedom as long as there is starvation, hunger, lack of clothing, lack of necessaries of life and lack of opportunity of growth for every single human being, man, woman and child in the country. We aim at that. We may not accomplish that because it is a terrific task. But we shall do our utmost to accomplish that task and hope that our successors, when

[Pandit Jawaharlal Nehru]

they come, may have an easier path to pursue. But there is no ending to that road to freedom. As we go ahead, just as we sometimes in our vanity aim at perfection, perfection never comes. But if we try hard enough we do approach the goal step by step. When we increase the happiness of the people, we increase their stature in many ways and we proceed to our goal. I do not know if there is an end to this or not, but we proceed towards some kind of consummation which in effect never ends.

So I present this Flag to you. This Resolution defines the Flag which I trust you will adopt. In a sense this Flag was adopted, not by a formal resolution, but by popular acclaim and usage, adopted much more by the sacrifice that surrounded it in the past few decades. We are in a sense only ratifying that popular adoption. It is a Flag which has been variously described. Some people, having misunderstood its significance, have thought of it in communal terms and believe that some part of it represents this community or that. But I may say that when this Flag was devised there was no communal significance attached to it. We thought of a design for a Flag which was beautiful, because the symbol of a nation must be beautiful to look at. We thought of a Flag which would in its combination and in its separate parts would somehow represent the spirit of the nation, the tradition of the nation, that mixed spirit and tradition which has grown up through thousands of years in India. So, we devised this Flag. Perhaps I am partial but I do think that it is a very beautiful Flag to look at purely from the point of view of artistry, and it has come to symbolise many other beautiful things, things of the spirit, things of the mind, that give value to the individual's life and to the nation's life, for a nation does not live merely by material things, although they are highly important. It is important that we should have the good things of the world, the material possessions of the world, that our people should have the necessaries of life. That is of the utmost importance. Nevertheless, a nation, and especially a nation like India with an immemorial past, lives by other things also, the things of the spirit. If India had not been associated with these ideals and things of the spirit during these thousands of years, what would India have been? It has gone through a very great deal of misery and degradation in the past, but somehow even in the depths of degradation, the head of India has been held high, the thought of India has been high, and the ideals of India have been high. So we have gone through these tremendous ages and we stand up today in proud thankfulness for our past and even more so for the future that is to come for which we are going to work and for which our successors are going to work. It is our privilege, of those assembled here, to mark the transition in a particular way, in a way that will be remembered.

I began by saying that it is my proud privilege to be ordered to move this Resolution. Now, Sir, may I say a few words about this particular Flag? It will be seen that there is a slight variation from the one many of us have used during these past years. The colours are the same, a deep saffron, a white and a dark green. In the white previously there was the *Charkha* which symbolised the common man

in India, which symbolised the masses of the people, which symbolised their industry and which came to us from the message which Mahatma Gandhi delivered. (*Cheers.*) Now, this particular *Charkha* symbol has been slightly varied in this Flag, not taken away at all. Why then has this been varied? Normally speaking, the symbol on one side of the Flag should be exactly the same as on the other side. Otherwise, there is a difficulty which goes against the rules. Now, the *Charkha*, as it appeared previously on this Flag, had the wheel on one side and the spindle on the other. If you see the other side of the Flag, the spindle comes the other way and the wheel comes this way; if it does not do so, it is not proportionate, because the wheel must be towards the pole, not towards the end of the Flag. There was this practical difficulty. Therefore, after considerable thought, we were of course convinced that this great symbol which had enthused people should continue but that it should continue in a slightly different form, that the wheel should be there, not the rest of the *Charkha*, that is the spindle and the string which created this confusion, that the essential part of the *Charkha* should be there, that is the wheel. So, the old tradition continue in regard to the *Charkha* and the wheel. But what type of wheel should we have? Our minds went back to many wheels but notably one famous wheel, which had appeared in many places and which all of us have seen, the one at the top of the capital of the Asoka column and in many other places. That wheel is a symbol of India's ancient culture, it is a symbol of the many things that India had stood for through the ages. So we thought that this *Chakra* emblem should be there, and that wheel appears. For my part, I am exceedingly happy that in this sense indirectly we have associated with this Flag of ours not only this emblem but in a sense the name of Asoka, one of the most magnificent names not only in India's history but in world history. It is well that at this moment of strife, conflict and intolerance, our minds should go back towards what India stood for in the ancient days and what it has stood for, I hope and believe, essentially throughout the ages in spite of mistakes and errors and degradations from time to time. For, if India had not stood for something very great, I do not think that India could have survived and carried on its cultural traditions in a more or less continuous manner through these vast ages. It carried on its cultural tradition, not unchanging, not rigid, but always keeping its essence, always adapting itself to new developments, to new influences. That has been the tradition of India, always to put out fresh blooms and flowers, always receptive to the good things that it receives, sometimes receptive to bad things also, but always true to her ancient culture. All manner of new influences through thousands of years have influenced us, while we influenced them tremendously also, for you will remember that India has not been in the past a tight little narrow country, disdaining other countries. India throughout the long ages of her history has been connected with other countries, not only connected with other countries, but has been an international centre, sending out her people abroad to far off countries, carrying her message and receiving the message of other countries in exchange, but India was strong enough to remain embedded on the foundations on which she was built, although changes, many changes, have taken place. The strength of India, it has been said, consists in this strong foundation. It consists

[Pandit Jawaharlal Nehru]

also in its amazing capacity to receive, to adapt what it wants to adapt, not to reject because something is outside its scope, but to accept and receive everything. It is folly for any nation or race to think that it can only give to and not receive from the rest of the world. Once a nation or a race begins to think like that, it becomes rigid, it becomes ungrowing; it grows backwards and decays. In fact, if India's history can be traced, India's periods of decay are those when it closed herself up into a shell and refused to receive or to look at the outside world. India's greatest periods are those when she stretched her hands to others in far off countries, sent her emissaries and ambassadors, her trade agents and merchants to these countries and received ambassadors and emissaries from abroad.

Now because I have mentioned the name of Asoka I should like you to think that the Asokan period in Indian history was essentially an international period of Indian history. It was not a narrowly national period. It was a period when India's ambassadors went abroad to far countries and went abroad not in the way of an Empire and imperialism but as ambassadors of peace and culture and goodwill. (*Cheers.*)

Therefore this Flag that I have the honour to present to you is not, I hope and trust, a Flag of Empire, a Flag of Imperialism, a Flag of domination over anybody, but a Flag of freedom not only for ourselves, but a symbol of freedom to all people who may see it. (*Cheers.*) And wherever it may go—and I hope it will go far,—not only where Indians dwell as our ambassadors and ministers but across the far seas where it may be carried by Indian ships, wherever it may go it will bring a message, I hope, of freedom to those people, a message of comradeship, a message that India wants to be friends with every country of the world and India wants to help any people who seek freedom. (*Hear, hear.*) That I hope will be the message of this Flag everywhere and I hope that in the freedom that is coming to us, we will not do what many other people or some other people have unfortunately done, that is, in a new-found strength suddenly to expand and become imperialistic in design. If that happened that would be a terrible ending to our struggle for freedom. (*Hear, hear.*) But there is that danger and, therefore, I venture to remind this House of it—although this House needs no reminder—there is this danger in a country suddenly unshackled in stretching out its arms and legs and trying to hit out at other people. And if we do that we become just like other nations who seem to live in a kind of succession of conflicts and preparation for conflict. That is the world today unfortunately.

In some degree I have been responsible for the foreign policy during the past few months and always the question is asked here or elsewhere: "What is your foreign policy? To what group do you adhere to in this warring world?" Right at the beginning I venture to say that we propose to belong to no power group. We propose to function as far as we can as peace-makers and peace-bringers because today we are not strong enough to be able to have our way. But at any rate we propose to avoid all entanglements with power politics in

the world. It is not completely possible to do that in this complicated world of ours, but certainly we are going to do our utmost to that end.

It is stated in this Resolution that the ratio of the width to the length of the Flag shall ordinarily be 2 : 3. Now you will notice the word "ordinarily". There is no absolute standard about the ratio because the same Flag on a particular occasion may have a certain ratio that might be more suitable or on any other occasion in another place the ratio might differ slightly. So there is no compulsion about this ratio. But generally speaking, the ratio of 2 : 3 is a proper ratio. Sometimes the ratio 2 : 1 may be suitable for a Flag flying on a building. Whatever the ratio may be, the point is not so much the relative length and breadth, but the essential design.

So, Sir, now I would present to you not only the Resolution but the Flag itself.

There are two of these National Flags before you. One is on silk —the one I am holding—and the other on the other side is of cotton Khadi.

I beg to move this Resolution. (*Cheers.*)

Mr. President: I have got notice of three amendments to this Resolution.

Many Honourable Members: No, no.

Mr. H. V. Kamath (C. P. and Berar: General): Mr. President, Sir, my amendment reads as follows:

"That the following new para. be inserted in the Motion:

'That inside the *Chakra* in the centre of the white band, the Swastika, the ancient Indian symbol of *Shantam, Shivam, Sundaram*, be inscribed.'

When I sent in the amendment, I had not seen the design of the Flag. There were at that time two or three considerations uppermost in my mind. I thought that this Flag, being the Flag of our new Indian Republic, of *Bharatavarsha*, should adequately symbolise our ancient culture, the culture of our spirit, the spirit which has animated our sages and our seers, which gave the message of *Shantam, Shivam, Sundaram* to the world, the message of peace, the peace not merely of stillness, not merely a passive peace, but a dynamic peace that passeth all understanding, the peace of which the great Valmiki has sung **"समुद्र इव गांभीर्ये धैर्ये च हिमवानिव"** *Samudraiva gambirye dhairyecha himavaniva*). I thought, Sir, if the *Swastika* be inscribed inside the *Chakra* it would along with the *Dharma Chakra* of Asoka fittingly symbolise our ancient culture, that is to say, the exoteric and esoteric aspects of our culture. The *Dharma Chakra* symbolises the exoteric and the *Swastika* symbolises the esoteric aspects. But, Sir, I have now seen the flag and I find that is somewhat hard to fit the *Swastika* into this *Chakra*. It would look cumbersome because of the design of the *Chakra*. The *Chakra* symbolises the *Dharma Chakra* or the wheel of the Law, the wheel of *Samsara* which revolves on these eternal verities of *Shantam, Shivam, Sundaram*

[Mr. H. V. Kamath]

These verities sustain the *Samsara* and in them we as part of that universe live and move and have our being. Pandit Nehru referred to our role as peace-makers and peace-bringers. That is certainly true. India's role has been that from years sempiternal, from the beginning of time. In the words of Swami Vivekananda, we have never dipped our hands in the neighbour's blood, our embattled cohorts have never marched into other lands for conquest, and we have always been the harbingers of peace and the makers of peace in this war-torn, war-weary world. Mr. President, Sir, after having seen the design of this Flag, I do see that it is difficult to fit the *Swastika* in, much as I would like to see it fitted in. It would make it rather clumsy and cumbersome. In these circumstances, I do not press this amendment and beg leave of the House to withdraw it.

Mr. President: Mr. Tajamul Husain.

Honourable Members: He is not present.

Mr. President: Dr. Deshmukh.

Dr. P. S. Deshmukh (C. P. and Berar: General): Mr. President, Sir, after such an impressive and emotional speech by Pandit Nehru one hesitates to say or add anything that may be interpreted or considered to take away from its effect. We always respect his words and on a somewhat sentimental question like this, our respect approaches adoration. I have some very strong grounds on which my amendment was based. It is not in any way or sense discordant with the speech to which we have just listened. My idea was essentially based on the retention of the tricolour absolutely intact with the *charkha* retained as it is—*charkha* which is the emblem of *Ahimsa* and the common toiling man associated so inseparably with the acquisition of our political freedom, and the name of Mahatma Gandhi. But in view of the fact that the House would rather stick to the Flag that has been proposed, I do not wish to move the amendment, although I still feel that my idea has much in it to recommend itself.

Mr. President: Mr. Shibbanlal Saksena had given notice of an amendment to the above amendment of Dr. Deshmukh but since that amendment itself has not been moved, no question of this amendment to the amendment being moved arises. Now we shall discuss the Resolution.

Seth Govind Das (C. P. and Berar: General): *[Mr. President, I have come here to support the resolution moved by Pandit Jawaharlal Nehru. I consider this day a landmark in the history of India. Today, Independent India is displaying her national flag. Everyone who has taken part in the struggle for freedom during the last twenty-seven years is today reminded like Panditji of the events during that period. We were unarmed and helpless and had no resources for achieving independence. But the way in which this battle of freedom has been fought and victory achieved has no parallel, not only in the history of India but also in the history of the world. Today we are achieving the victory for which we were trying for the last so many years. We are also reminded of those who came forward so many times to pull down this flag, to trample it and to set fire to it. But when Truth and Justice were with us, it was altogether impossible to trample it and to finish it in that way. After twenty-seven years, we have been able to prove to the world that even an unarmed nation, with no resources at its command, can achieve freedom, if it follows the path of Justice and Truth.

Today, I am reminded of the day when in 1922, Pandit Motilal Nehru came to Jubbulpore for the first time. I am a resident of Jubbulpore. That was the first time when this flag was displayed in India. At that time it had three colours—red, white and green. It was a tri-colour no doubt. At that time, this flag was hoisted over the Town Hall of Jubbulpore for the first time in India. Who is not reminded of Pandit Motilal on seeing Pandit Jawaharlal Nehru? At that time a question was raised in the House of Commons as to how this flag was hoisted over a public hall and the Prime Minister of Great Britain assured the house that no event of the sort would be repeated in India in future. But I am pleased to find today that the flag which was hoisted for the first time twenty-five years ago in Jubbulpore, my home town, will now be unfurled over every public building there. It will be a matter of pride for every one in India.

There is no touch of communalism in the three colours of the flag. Panditji has already told you this in the course of his speech. It is true that at a time when the colours were red, white and green there was a trace of communalism in the flag. But when we changed these colours to saffron, white and green, we declared it in clear words that the three colours had no communal significance. At that time, we also made it clear as to what these colours signified. Those who have been maddened by communalism today, should not take this flag to be a communal flag. You see that it has the Asoka chakra in the middle. Panditji told you what a great place Asoka has in our history. After the battle of Kalinga, Asoka tried to unite the whole world with love and he achieved such success that the historians not only of this country but also of the whole world admit that there has been no Emperor like Asoka in the world. Mr. H. G. Wells writes in his History of the World that while the rest of the Emperors led a bloody life, Asoka alone tried to unite the world with love.

*[English translation of Hindustani speech begins.

[Seth Govind Das]

When we see the colours of our flag we should keep in mind other things also. I want to tell those who say that the saffron colour represents Hindus, that it is wrong to say so. No doubt at one time it was the colour of the Hindus. Druing the regime of the Peshwas it was the colour of the Hindus. In their fights for freedom, Rajputs used saffron dress and saffron ensign. But if we go more remote into the past, we will have to accept that saffron was not the colour of these times. You may be knowing that in the times of Mahabharat there was no question of colour. The flag flying over the chariot of Arjun had the symbol of Hanuman. Karna's flag had the symbol of the elephant. Therefore to describe any colour as the ancient colour of the Hindus is historically wrong. I say that it is natural that the flag under which we fought the battle of freedom during the last twenty-seven years and have now achieved independence, should be our national flag. I am pained to see that at present, some people maddened with communalism are bringing about such events, which I am confident, after sometime when sense will dawn upon them, will make them very much ashamed of themselves. Only day before yesterday a meeting was held in Delhi regarding Hindi. The motion that Hindi should be the national language and Devanagari script the national script, was to be moved in the meeting. Pandemonium prevailed in the meeting and national flags were removed from cars and thrown away. I say that to be mad with communalism and to do such things and to insult the flag in this way is an insult to the whole nation. Human beings live in this country and not gods and they have the three dispositions of "Satvaguna, Rajoguna and Tamoguna" ('goodness, passion and dullness'). If such incidents occur, peace, righteousness and happiness of which this flag is the symbol, will disappear from this land. Therefore I warn these people, who are mad with communalism that they should not do such things. As regards the green colour, there was a time when this was the colour of the flag of the war of Independence. I would remind you of the war of Independence of 1857. At that time, the colour of our flag was green and under it we fought that battle. It was at that time not the colour of Muslims alone or of Hindus but of all those who fought the war of Independence. Therefore nothing is more painful than to be against any particular colour and that too at a time when the whole of India is becoming independent and this flag will be hoisted everywhere in the country. We have styled this flag as a world-conqueror and have spoken of its conquest of the world with love. We want to conquer the world with non-violence and love. This is its symbol. When we will have done that, we will have fulfilled our pledge. I support this resolution with all my heart.]*

Shri V. I. Muniswami Pillai (Madras: General): Mr. President, Sir, I appear before you today to support the Resolution so ably moved by our great National Leader Pandit Jawaharlal Nehru who had a lion's share in the freedom struggle of this great country.

]* English translation of Hindustani speech ends.

Sir, he has explained to us the significance of this Flag which is to be held and defended by the millions of the inhabitants that live in this great country. It is not to be the Flag of the rich or the wealthy, but it is to be the Flag of the depressed, oppressed and submerged classes all over our country.

Sir, I particularly welcome the introduction of the wheel in the centre. Mahatma Gandhi gave us the great *mantra* that lies in the matter of the *Charkha*. Those of us who have taken to *Charkha* feel proud today after so many centuries of political struggle in this country, that it has been possible to bring a Flag for this country which was lacking all these centuries.

I also welcome the introduction of the Sarnath Lion Capital of Asoka. Asoka, coming as he did after the great Buddhist order, has given us the great *Panchaseelam*, above all, sympathy for humanity.

The Harijan classes and all those communities who are in the lowest rung of the ladder of society, feel that the constitution which is on the anvil of this supreme body is going to bring solace to the millions of the submerged classes. The principle of Buddha who exhibited practically his great sympathy for suffering human beings, I am sure, Sir, will be practically carried out after accepting this great Flag.

With these words, I support the Resolution.

Chaudhri Khaliquzzaman (United Provinces: Muslim): *[Mr. President, I support the resolution moved by Pandit Nehru (*Cheers*). I think that from today everyone, who regards himself as a citizen of India—be he a Muslim, Hindu or Christian,—will as a citizen make all sacrifices to uphold and maintain the honour of the flag which is accepted and passed as the flag of India (*Cheers*). I do not wish to narrate again history which is wrong. I want that all of us should forget the past and should oust from our minds the old things. Therefore, I hope that the majority too shall forget the past. All of us should make a fresh history of India from today in which everyone, who has got sincerity, dignity and interest in the reconstruction of the country and the nation, may join hands. I know that a flag to look at, is simply a piece of cloth but a country's flag symbolises its ideals and its aspirations, both moral and spiritual. I feel happy that none, who calls himself a citizen of India, can have occasion to disagree with the speech of Pandit Nehru in support of the flag. Therefore, I think that from whatever angle we may view it, the step taken today will only strengthen the foundations of India. Every Muslim, Hindu and Christian will feel proud in hoisting this flag throughout the length and breadth of India, and he shall honour it (*Cheers*). With these words I support the motion.]*

[ ] English translation of Hindustani speech.

Sir S. Radhakrishnan (United Provinces: General): Mr. President, Sir, I do not wish to say very much after the very eloquent way in which Pandit Jawaharlal Nehru presented this Flag and the Resolution to you. The Flag links up the past and the present. It is the legacy bequeathed to us by the architects of our liberty. Those who fought under this Flag are mainly responsible for the arrival of this great day of Independence for India. Pandit Jawaharlal has pointed out to you that it is not a day of joy unmixed with sorrow. The Congress fought for unity and liberty. The unity has been compromised; liberty too, I feel, has been compromised, unless we are able to face the tasks which now confront us with courage, strength and vision. What is essential to-day is to equip ourselves with new strength and with new character if these difficulties are to be overcome and if the country is to achieve the great ideal of unity and liberty which it fought for. Times are hard. Everywhere we are consumed by phantasies. Our minds are haunted by myths. The world is full of misunderstandings, suspicions and distrusts. In these difficult days it depends on us under what banner we fight. Here we are putting in the very centre the white, the white of the Sun's rays. The white means the path of light. There is darkness even at noon as some people have urged, but it is necessary for us to dissipate these clouds of darkness and control our conduct by the ideal light, the light of truth, of transparent simplicity which is illustrated by the colour of white.

We cannot attain purity, we cannot gain our goal of truth, unless we walk in the path of virtue. The Asoka's wheel represents to us the wheel of the Law, the wheel of the *Dharma*. Truth can be gained only by the pursuit of the path of *Dharma*, by the practice of virtue, Truth,—*Satya*, *Dharma*—Virtue, these ought to be the controlling principles of all those who work under this Flag. It also tells us that the *Dharma* is something which is perpetually moving. If this country has suffered in the recent past, it is due to our resistance to change. There are ever so many challenges hurled at us and if we have not got the courage and the strength to move along with the times, we will be left behind. There are ever so many institutions which are worked into our social fabric like caste and untouchability. Unless these things are scrapped, we cannot say that we either seek truth or practice virtue. This wheel, which is a rotating thing, which is a perpetually revolving thing, indicates to us that there is death in stagnation. There is life in movement. Our *Dharma* is *Sanatana*, eternal, not in the sense that it is a fixed deposit but in the sense that it is perpetually changing. Its uninterrupted continuity is its *Sanatana* character. So even with regard to our social conditions it is essential for us to move forward.

The red, the orange, the *Bhagwa* colour represents the spirit of renunciation. It is said:

"सर्वे त्यागा राज धर्मेषु दृष्टा" (*Sarve tyage rajadharmesu drsta*).

[Sir S. Radhakrishnan]

All forms of renunciation are to be embodied in *Raja Dharma*. Philosophers must be Kings. Our leaders must be disinterested. They must be dedicated spirits. They must be people who are imbued with the spirit of renunciation which that saffron colour has transmitted to us from the beginning of our history. That stands for the fact that the World belongs not to the wealthy, not to the prosperous but to the meek and the humble, the dedicated and the detached. That spirit of detachment, that spirit of renunciation is represented by the orange or the saffron colour and Mahatma Gandhi has embodied it for us in his life and the Congress has worked under his guidance and with his message. If we are not imbued with that spirit of renunciation in these difficult days, we will again go under.

The green is there—our relation to the soil, our relation to the plant life here on which all other life depends. We must build our Paradise here on this green earth. If we are to succeed in this enterprise, we must be guided by truth (white), practise virtue (wheel), adopt the method of self-control and renunciation (saffron). This Flag tells us 'Be ever alert, be ever on the move, go forward, work for a free, flexible, compassionate, decent, democratic society in which Christians, Sikhs, Moslems, Hindus, Buddhists will all find a safe shelter.'

Thank you. (*Loud cheers.*)

Dr. Mohan Sinha Mehta (Udaipur State): Mr. President, Sir, as I had listened from my seat to the great speech which was delivered by our great leader on a great subject, the first thought that rose in my mind was that there should be no more speeches on that subject and that the Resolution should be adopted unanimously from every section of the House by acclamation. But since it was not to be and some speeches were made—fortunately no amendments are being considered—I ventured to come up here and say a few words in support of the Resolution.

Sir, I should like to say that the proposal which has been put before us has the support of the Indian States also. (*Cheers.*) One of our representatives, a distinguished Prime Minister, participated in the deliberations of the Committee which has brought this proposal before you through Pandit Jawaharlal Nehru.

Sir, this is a historic occasion when free India is going to adopt a National Flag and I wish you to understand that a very large majority of the Indian States in India are and remain an integral part of India. (*Cheers.*)

Sir, when I was listening to Pandit Nehru's speech from my seat, I felt he symbolised to me in my vision the subject of the Resolution which he was moving, the sombre background of the panels of this room and Pandit Nehru in his spotless white. Knowing Pandit Nehru as we do, I am sure I am not exaggerating when I say that he in his figure represented the significance of the subject-matter of this Resolution.

Sir, as he explained to us the contents of the Flag, and its design, especially when he was coming to the *Chakra* of Asoka's column, I thought he would also refer to it as symbolising the participation of the Indian States in the Indian Union. For the first time, Sir, after a long long time, we will have India ruled for India and by Indians. Again Pandit Nehru symbolises this also—the symbol of self-rule. But you will pardon my saying that in a large part of India which you colour yellow on the map the ideal of self-rule was maintained by the Indian States. Please do not analyse this proposition on the basis of political philosophy. When we are discussing the Flag of India we are not discussing abstract doctrines or political practices, but primarily things which are smybolic, things of sentiment. Am I far wrong in saying that the *Chakra* of Asoka represents the Indian States, because since the time of Asoka the Great, the whole country has not been under Indian rule, ruled by Indians for Indians? At any rate, some of us would like to look upon it with that sentiment. I am, therefore, speaking here not only on my own behalf, but also on behalf of a large number of States; I have not consulted them, but I am sure they will agree with me when I say that this Flag whether it is flying over a building in India or on the high seas in foreign waters, this Flag would represent the combined sentiments of the Union of India, irrespective of what places of worship we go to, irrespective of the difference in our names and nomenclatures; we are all Indians and this is our Flag.

Sir, I wholeheartedly support the Resolution.

Mr. Mahomed Sheriff (Mysore State): Mr. President, Sir, I am sorry that some controversy has been created about the Resolution which was so admirably moved by Pandit Jawaharlal Nehru about the question of the consideration of the Indian Flag. Some gentlemen suggested that there should be some variation in the colours represented on this Flag. Some wanted tha the.....(*Hon'ble Members*: "No, no".) Very well.

While appreciating the motive which has actuated these gentlemen in making this representation, yet, speaking for myself, I say that so far as this Flag is concerned, it is the best Flag and I do endorse whatever Pandit Jawaharlal Nehru has said this morning while sponsoring this Resolution.

Sir, the white, the saffron and the green colours, signify renunciation, purity, or sacrifice. Great spiritual significance is attached to them. These colours are venerated by all persons, whether they are Hindus, or Muslims, Christians or Parsis. The *Chakra* which is there in the centre of the Flag symbolises motion, progress and advancement and from aesthetic and other considerations also, it suits the genius, tradition and culture of India. As was said by Chaudhuri Khaliquzzaman, it is a Flag which deserves the respect of everybody who lives and has his being in India. With these words, Sir, I have very great pleasure in supporting the Resolution sponsored by Pandit Jawaharlal Nehru.

Mr. Satyanarayan Sinha (Bihar: General): I suggest, Sir, that the question be now put.

Honourable Members: The question may be put.

Mr. President: I have got the names of some twenty five speakers here, because it is an occasion on which everyone would like to express himself. But I think it is not necessary to carry on the debate any further, because we have heard from members all that could be said. I would, therefore, put the closure motion to vote.

Mr. Tajamul Husain (Bihar: Muslim): Sir, before closure is applied, I would like to submit that more speeches should be allowed, because on an occasion like this everybody should be given the opportunity to express his thoughts.

Mr. R. K. Sidhwa (C. P. and Berar: General): Sir, this is a memorable day and the opportunity to express himself should be given to everyone who wishes to speak.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, it is not every day that we will be adopting a National Flag for the country and as such it is but proper that if a few more members want to speak to-day they should be allowed to do so.

Pandit Govind Malaviya (U. P.: General): Sir, let us have the whole of today as the Flag day.

Mr. President: I am entirely in the hands of the House; if you do not want more speeches, I shall stop here, but if members want more opportunities to speak, I shall proceed in the order in which I have got the names here with me.

Shri Balkrishna Sharma (United Provinces: General): We want to hear the old mother.

Mr. Tajamul Husain: We would like to hear the "Bul-bule Hind."

Mr. President: I will call upon her at the end. I am sure it will be the sweetest speech and we should, according to our old custom, end with sweets. (*Cheers*).

Mr. Saadulla may now speak.

Saiyid Mohammad Saadulla (Assam: Muslim): Mr. President, Sir, my intervention in this debate was not at all necessary, in view of the very learned and able speech of Pandit Jawaharlal Nehru and speeches from other quarters. The reason for my standing before you is that I want to make perfectly clear our position. The Muslim members who are in this House in spite of the fact that you have extended to them "*swagatam*" on the very first day, are looked upon by some members with distrust and attempts were made to debar us from participating in this august Assembly unless we disclaim certain opinions we hold. I have seen in the press certain references that the Muslim members in this Constituent Assembly are unwanted, and some papers had gone to the length of saying that the Muslim members here will be fifth columnists and saboteurs of the Constitution. I am very glad that the Resolution of Pandit Nehru gives us a chance of belying these aspersions and removing distrust by proclaiming from the housetops our allegiance to the Union of India where by accident of residence and birth we happen to be. It is the injunction of Islam,

emphasized by instructions from League High Command and leaders, that wherever we be we must be good and loyal to the government which functions there. Acting on that principle I salute the Flag which has been presented to the House by Pandit Nehru.

In my opinion the Flag symbolises the evolution of our aspirations, the fulfilment of our struggles and the ultimate result of all our sacrifices. If I may be permitted to draw an analogy from nature, the saffron represents the condition of the earth, the scorched condition caused by the torrid heat of the Indian Sun. When the crystal-clear white raindrops and the water from the snow-capped mountains and rivers comes down we get our arid areas converted into smiling green fields the crops of which sustain us and conduce to the growth of the people. Similarly we had in our political struggle our scorched earth days but later on came our days of hope and today this Flag unfurled in this House has brought us to the culminating point, the desiderata of our past struggles. I am glad, Sir, that the Flag remains as it is and that the amendments proposed were not moved, for India is represented in the different colours of this Flag. India is very well noted for her spiritual attainments. Everywhere it is admitted that India has got a great spiritual message to send out to the different countries of the world. The saffron, as is well known, is the colour of all those people who live the spiritual life not only among Hindus but also among Muslims. Therefore the saffron colour should remind us that we should keep ourselves on that high plane of renunciation which has been the realm of our *Sadhus* and saints, *Pirs* and *Pandits*. I therefore welcome the inclusion of this colour in the Flag.

Next I come to the white portion. White both among Hindus and Muslims is the emblem of purity. I congratulate the High Command of the Indian National Congress that by a bold stroke of imagination they took up the white cap as the symbol of their creed. The presence of the white portion in this Flag should remind every one who takes it up that we must be pure not only in word but also in deed. Purity should be the motto of our life,—individually as well as in connection with the State.

Lastly, Sir, green reminds me of the fact that it was the emblem of the upsurge of India's freedom. Green was the emblem of the Flag which was raised by Bahadur Shah in 1857. But it has more than a sentimental or symbolical value to us Muslims because green was the colour of the Flag of the Muslims from the time of the great Prophet of Arabia thirteen centuries ago. Some may regret that the *Charkha* which was the emblem of the masses has been replaced by the *Dharmachakra of Asoka*. But I consider that it was really a heaven-born inspiration of the authorities that this *Chakra* now takes the place of the *Charkha*. Although the *Charkha* was the emblem of our self-help and of our approach to the common masses and was embodied in our activities by the message of the Mahatma, yet towards the later stage the ideal of *Charkha* had been polluted, the instruction or inspiration of Mahatma Gandhi had been deviated from and those who wore the *Charkha* which was the symbol of non-violence were most violent in their actions which at one time Pandit Nehru had at great personal risk to assuage. The *Dharmachakra* of Asoka reminds

us of the condition of the people at the time of that great Buddhist Emperor of India. He ruled not for his personal aggrandisement but for the contentment, peace and prosperity of the people under his charge. This emblem now embodied in our National Flag ought to remind every administrator and every citizen of the federation of India that we should forget the past and look to the future and try to carry on the tradition of that great Buddhist Emperor Asoka, and we should be reminded at all times that we are here not only for our material prosperity but also for our spiritual advancement. This *Chakra* was a religious emblem and we cannot dissociate our social life from our religious environments.

Sir, with these few words not only on behalf of myself but also as Deputy Leader of the Muslim League Party and as an old inhabitant of the furthest and the smallest province of the Indian Union, Assam, I salute this Flag as a symbol of India's freedom.

Dr. H. C. Mookherjee (West Bengal: General): Mr. President, ever since the Indian Christian community became conscious of the fact that it was fundamentally an Indian community, its great leaders in the past have always fully identified themselves with the Indian Nationalism. I need only remind those, who do me the honour of listening to me, of the name of the late Kaka Baptist of Bombay, of the late K. C. Bannerjee of Bengal, of the late Bishop Chidambaram of the United Provinces and the late Dr. S. K. Dutta of Punjab. These names are only a few out of the many I could quote to prove that we have all along identified ourselves fully with Indian Nationalism. From one point of view we have been misunderstood. It has been held that because we profess Christianity,—essentially an Asiatic religion,—and because we have certain contacts with foreign Missions, therefore the Indian Christian community has what is known as Christian mentality. It is not so and I stand here to say that it is an incorrect idea. It is a misconception and I want it to be clearly understood that today I, on behalf of my community, am pledging our allegience once more to the Flag.

To me it seems significant that some of the workers very closely associated with the Congress are Indian Christians and I am sure my friends will bear testimony to the fact that we too have produced leaders who have fully identified themselves with Indian Nationalism. We owe our allegiance to the Flag, not only because we are Indian Christians, but because we have been always well treated in the past by the Indian National Congress. In fact it would be no exaggeration to suggest that we have been better treated by the Indian National Congress than by those with whom we are affiliated from the standpoint of religion. I take this opportunity of reminding the Hon'ble Pandit Jawaharlal Nehru of an occasion which happened in 1938 when I had been called to the Punjab by Dr. S. K. Dutta to do a little service in connection with a function at the Forman Christian College. At that time the University Union at Allahabad had arranged for an address by me on Prohibition and they insisted that I should speak on this subject because shortly before that I had visited Salem in Madras through the kind offices of Rajaji. Pandit Jawaharlal Nehru had agreed to preside over the function, but had forgotten the

[Dr. H. C. Mookerjee]

subject on which I was expected to speak. At his request, first of all I explained my ideas about the duties of minorities when asked by him to put before the audience our views regarding the minority question. He was to have left for Delhi within half an hour, but he forgot everything about it and in consequence missed the train. After I had spoken, Pandit Nehru told me that what the community had stood for would be remembered by the Indian National Congress when it came to power. Within three or four days I received reports of a certain case of injustice suffered by Indian Christians in some villages. I went to the villages and found out that the charges were true. I placed before Pandit Nehru the information which I gathered and in seven days' time the whole matter was settled. In that way our religious liberties were restored.

May I in this connection mention another occasion when we received prompt help from the Congress? When I was in Madras, the Principal of the Physical Education College at Saidapet, Dr. Beck, told me that he had immense difficulties in getting land for the Madras College of Physical Education. As soon as Rajaji came to power he granted us even more land than we had wanted within a short time. These are the services that we have received from the Congress. Thus not only because we are in sympathy with the objectives of the Congress but also because of good treatment we have identified ourselves with the Congress. Once more I repeat that the Indian Christians owe allegiance to the National Flag.

Mr. R. K. Sidhwa: Mr. President, Sir, the Honourable Mover of this motion, Pandit Nehru, said that he felt it a proud privilege to move this Motion and present this Flag to this House. Sir, it is not the proud privilege of only Hon'ble Pandit Nehru today, but it is the proud privilege of the whole Nation to see this Flag round which the people have struggled hard to win freedom has become an accomplished fact, that the National Flag hereafter shall be an officially recognised Flag. While our young and old men and women and children hoisted this Flag on private houses and public buildings, the British bureaucracy in India pulled it down and trampled it under their feet. Notwithstanding that, our countrymen took up that very Flag and hoisted it on the very building from which it had been pulled down. While doing so they strictly followed the doctrine given to us by Mahatma Gandhi to carry on the struggle in a non-violent way. Mahatma Gandhi enjoined upon us to be non-violent in word, thought and deed. I must admit, Sir, while it has not been possible to follow non-violence in word and thought, I, along with millions of Indians have strictly followed the principle of non-violence while fighting the battle against the British bureaucracy in India. Through that non-violent struggle we have been able to achieve our cherished goal today. On the Flag problem, a popular slogan went round, 'Up, up with the National Flag; down, down with the Union Jack'. We do not mean disrespect to any Nation's Flag, but we considered the hoisting of the British Flag here, a symbol of slavery. On 15th August this Flag which has been presented to us today will be hoisted on this august Assembly, on the great magnificent Secretariat Buildings and I may also say, Sir, on the Viceregal Lodge. (*Cheers.*)

And the Union Jack will be respectfully, slowly and solemnly brought down. Undoubtedly, on that day, the National Flag will be hoisted all over India and it will be saluted by every one.

Sir, the first National Flag, I should say the Swaraj Flag, was hoisted in 1911 at the Indian National Congress Session held at Calcutta by that great President, by that great congressman, by that great Indian Patriot who was one of the founders of the Indian National Congress and, may I say, the prime mover for the formation of the Congress, the late Dadabhai Naoroji. That flag I have seen in the picture. I have got it in my house. It is not the same Flag as we see here today. I now remember what that great leader said on the occasion of hoisting that Flag in Calcutta in 1911.

Mr. President: I did not want to interrupt the speaker. But he is mistaken in regard to the year. It was 1906 and not 1911.

Mr. R. K. Sidhwa: Thank you, Sir. While hoisting the Flag he said: 'I present this Flag. Under this Flag we should fight our battles'. Sir, this Flag has since changed in design and now it has been officially recognised as the Flag of the Nation. We shall all salute it. It will remain firmly and solidly till eternity wherever it is flown.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, as I listend to Pandit Jawaharlal Nehru, I thought no speech would be necessary, but since various groups in this House have severally tried to acknowledge their acceptance of and allegiance to the Flag which we are going to adopt as the National Flag of this country, I thought I would also say a few words on behalf of the 30 million Adibasis, the real owners of this country, the original sons of the soil, the most ancient aristocracy of India, who have been fighting for freedom for the last six thousand years. On behalf of these my people, I have great pleasure in acknowledging this Flag as the Flag of our country in future. Sir, most of the members of this House are inclined to think that flag hoisting is the privilege of the Aryan civilised. Sir, the Adibasis had been the first to hoist flags and to fight for their flags. Members, who come from the so-called province of Bihar, will support me when I say that, year after year, in the *melas, jatras* and festivals in Chota Nagpur, whenever various tribes with their flags enter the arena, each tribe must come into the *jatra* by a definite route, by only one route and no other tribe may enter the *mela* by the same route. Each village has its own flag and that flag cannot be copied by any other tribe. If anyone dared challenge that flag, Sir, I can assure you that that particular tribe would shed its last drop of blood in defending the honour of that flag. Hereafter, there will be two Flags, one Flag which has been there for the past six thousand years, and the other will be this National Flag which is the symbol of our freedom as Pandit Jawaharlal Nehru has put it. This National Flag will give a new message to the Adibasis of India that their struggle for freedom for the last six thousand years is at last over, that they will now be as free as any other in this country. I have great pleasure, Sir, in accepting and acknowledging on behalf of the Adibasis of India the Flag that has been presented to us by Pandit Jawaharlal Nehru.

Mr. Frank R. Anthony (C. P. and Berar: General): Mr. President, Sir, as I listened to the very eloquent speech of Pandit Jawaharlal Nehru in introducing and commending this Flag, I thought that it was a sufficient seal to the solemnity of the occasion. But since the understandable feelings and enthusiasms of members have led to the making of several speeches, I felt that I should say a few words. I had the privilege of serving in the Committee which finalised the form and shape of this Flag. It was made clear there that this Flag did not contain any communal motives or significance. While we have retained essentially the banner under which the fight for India's freedom was fought and brought to consummation, the Flag as hoisted today has certain qualities and motives which should be cherished by every nation that treads the path of progress and freedom. I believe sincerely that this is really a beautiful Flag in its physical aspect and also in its motives. Today this Flag is the Flag of the Nation. It is not the Flag of any particular community, it is the Flag of all Indians. I believe that while this is a symbol of our past, it inspires us for the future. This Flag flies today as the Flag of the Nation, and it should be the duty and privilege of every Indian not only to cherish and live under it, but if necessary, to die for it.

Giani Gurmukh Singh Musafar (East Punjab: Sikh) *[Mr. President, I feel that after the speech of such great men as Pandit Jawaharlal Nehru and Sir Radhakrishnan, who have so brilliantly interpreted the colours of the flag I need not say much. I have stood up only with the idea of associating myself with those sentiments. The sacrifices made for this flag and in the cause of the country's freedom have been pathetically narrated by Pandit Nehru in his own inimitable style. Under this Flag, my community mustered around the Indian National Congress and contributed its utmost to those sacrifices. I think no one shall be happier than the Sikhs to see those sacrifices flowering and bearing fruit today. But there is one thing and that is unavoidable that flowers are never without thorns. At this hour of happiness, I feel that many of my brethren, who were one with us at the time of making sacrifices, could not now be here with us to share our happiness. It may happen sometimes that a thorn is useful in heightening the beauty and charm of the flower. I am only trying to give vent to the emotions which fill my heart at the thought as to how many sacrifices we had to make to see this flag up in the air. We have reached the position today that we can instal our flag wherever we like. Now it is equally incumbent upon us to maintain the dignity of this fluttering flag. Perhaps at times we may have to make the same sacrifices to keep it aloft as we have had to achieve it. Therefore, I promise on behalf of my Sikh community that they shall continue to make sacrifices for upholding the honour and dignity of the flag with the same vigour, daring and fearlessness, as they have shown in the cause of the country's freedom. With these words, I support the Resolution moved by Panditji.]*

[ ] English translation of Hindustani speech.

Mr. H. J. Khandekar (C. P. & Berar: General): *[Mr. President, I support the Resolution on this flag as moved by the Honourable Pandit Jawaharlal Nehru. You know what great sacrifices have been made by us to maintain the honour of this Flag in this country; and how many sacrificed their lives, got their children trampled, were killed and destroyed. The British Empire used all their power to destroy this Flag, but we the inhabitants of this country always cherished and adored it. This Flag, under which we find Free India and which we wish to hoist over Free India, is the same Flag which even today gives us strength to free ourselves.

This Flag has three colours. One is saffron which is related to our own community. I belong to the depressed classes and I wish to remind you that when Shivaji was in power and when a chance of freeing this country and establishing a Hindu Raj arose our community sacrificed lacs of persons under this saffron banner. For example, the Iron Pillar of Sidhanath Mahar in Koragaon reminds us of that age even today.

Here is the Flag. It has three colours. The first one is related to my community. The second colour which is white denotes peace and tranquillity and indicates unity amongst all the communities in this country and for this reason this Flag represents every religion and every language in the country. As the President of the All India Depressed Classes Union, I wish to give this assurance before the House that my community shall always follow the Flag which we are adopting today. With these words, I support the Resolution on the Flag on behalf of my own self and my community as a whole. If the honour of the Flag, maintained by us even up to this day is a besmirched any time, my Community along with other inhabitants of the country will sacrifice themselves to save the honour of the Flag. With these words I beg to support the Resolution.]*

Shri Balkrishna Sharma: †[Mr. President, Sir, when my leader Pandit Jawaharlal Nehru has expressed such lofty sentiments today on this occasion, I myself thought that no speech should be delivered after that. But the conventions prevailed and members of every group have expressed their ideas here. On the suggestion of my elders, I also submitted my name to the President and wish to express myself briefly before you today.

This day, the day of moving this resolution by Pandit Jawaharlal Nehru, is a day of congratulations to our country and its history. When I was listening to the speech of Pandit Nehru, I felt as if we had finished one part of our journey and were beginning the next. Now, when the first part of our journey comes to a close, we feel obliged to look back. In the history of the last twenty years, a great man, born amongst us, has so melodiously and artistically harmonized our life that it would be ingratitude on our part, if we do not bow to him. It is not possible to enumerate in this short time, what Mahatma Gandhi has given us and contributed towards our national life and what is

[ ] English translation of Hindustani Speech.
†[English translation of Hindustani speech.

[Shri Balkrishna Sharma.]

being given by him to us even now. But if you take a little trouble and go back to the circumstances prevailing 27 or 28 years ago, you will find what great progress has been made in our country through the efforts of the world's greatest leader. There was a time, when Congress was merely passing resolutions and assembling for three days during Christmas and it considered that its duty ended there. When Mahatma Gandhi said that we would not get independence by passing resolutions, and that strength was necessary to obtain rights, the nation looked at him in bewilderment and thought that he had gone mad. The message of gaining strength for a nation without arms appeared to be a mad idea in the history of the world. The world thought of only one way as a means of attaining national rights—and that was the way of violence. Should we not remember today that development of mass consciousness in the country, which was carried out by Mahatma Gandhi by non-violent methods? It appealed to the people and they organised. I think that it was the greatest gift of Mahatma Gandhi that he changed a mere resolution-passing Congress into a fighting body. His second great gift to our country was that the Congress which worked only for three days (in a year) was changed into a permanent organisation. His third great gift is of a national language. We used to express ourselves in a foreign language. Mahatma Gandhi by offering us Hindi as a National language, gave us a chance to feel and awaken our national sentiments. One of those boons is that of the Flag which has been offered by him to this country. Thus centralising the collective strength of our country in the form of this flag, he inspired us to proceed and march on the way to sacrifice. Today, on behalf of all of us, I offer my homage at the feet of this great man.

When Pandit Jawaharlal Nehru was addressing us, I looked at him and felt what had been done by this great man to our country. How much idealism have we attained through him and how much sense of service and devotion have we imbibed through him? On behalf of you all, I offer my respects to Pandit Jawaharlal Nehru and Mahatmaji. When I was listening to his speech, I felt that one part of the journey is coming to an end. An idea crept in my mind that now we have to see what next we have to do. Pandit Jawaharlal Nehru interprets the *Chakra* in the centre of our National Flag as an indication of movement. It reminds me of the old message which I had read in *Brihadaranyaka Upanishad* "Remaining asleep is *Kaliyug*, opening of eyes is *Dwapar* getting up is *Treta* and moving about is *Satyayug*". Today Pandit Jawaharlal after giving us the message of motion in the form of this chakra, is once again taking us to *Satyayug*. *Upanishad* writers say: "Charaiveti. Charaiveti". Bhagwan Buddha himself has said "Charaiveti Khikhave, Charaiveti" . "Go on, endeavouring continually, go on again and again, there is no place for rest". On behalf of the congressmen today, may I give this assurance to our leader Pandit Jawaharlal Nehru "Dear Captain! Under your leadership we shall try to follow you with all our strength."

Today on this occasion I salute the National Flag and pray to God that a new era may dawn upon this country, a new earth and a new sky may be formed in this country which may be able to give a message of eternal peace to the entire human world from under this Flag.]*

Pandit Govind Malaviya: †[Mr. President, Sir, when I came here today I had not the slightest idea that we would speak any thing about this Flag. But when Pandit Jawaharlal Nehru, the beloved leader of the country, made his speech, a wave of joy and enthusiasm arose in our hearts and we felt a desire to pay our tribute to the National Flag on this solemn and auspicious occasion. Thus, Sir, I also sought your permission to speak a few words.

The importance of a national flag does not depend on its colour, its bands or its other parts. The flag as a whole, is important and other things—the colours, etc., that it contains—are immaterial. The flag may be of a piece of white cloth or of any other insignificant material but when it is accepted as a National Flag, it becomes the emblem of national self-respect. It becomes an expression of the sense of freedom of a nation. It becomes its dearest object. For the last 27 years this tricolour flag has been uppermost in our thoughts and imagination. We have made numerous sacrifices for the freedom of India with this flag in our hands. As I have already stated, when a flag or any other thing is accepted by a nation as its ensign, it becomes the dearest object of the nation and assumes the most important and the highest place in the life and history of that nation. This, our Flag, has been the symbol of the hopes and dreams of four hundred million souls for the last 27 years. For the honour of this flag millions holding it dearer than their lives, suffered tremendously. Numberless people went to jails leaving their children starving. People had their heads and bones broken by the lathis of police and the military to keep it aloft. Unarmed youngmen and students of the country opened their chests before the bullets of the English military or police to protect the honour of this flag. For generations, it has been our flag and the great feeling, emotion and enthusiasm we have in our hearts for this flag is beyond human description. We are eager to pay our tribute to this flag.

Sir, this flag for which great sacrifices have been made and about which there are many 'gathas' of patriotism, heroism and sacrifices, has become the centre of our thoughts. There are various opinions today in our country about this flag. Many members have given notices of various resolutions about this flag. I know every mover has his own individual and important reasons for moving his resolution. If their suggestions are not accepted here, it does not mean that we do not appreciate the thoughts of any particular individual or section. We do not entertain the idea that because some differences of opinion exist regarding this flag, anybody forfeits his claim to it. On the contrary, we hold that he has similar claims to it as we have . I would like

]* English translation of Hindustani speech.
†[English translation of Hindustani speech.

[Pandit Govind Malaviya]

to address a few words to those who have opposed the adoption of this flag, or have moved amendments for effecting some change in it. I would like to address a few words to the Hindu members who have not approved of the flag. There may be some ground for their complaint but it should not be forgotten that this flag has been the emblem of our highest hopes and noblest emotions for 27 years. It has been the advocate, after 27 years' struggle and sacrifices, presenting before the House some other flag for adoption? The struggle for independence started by the Congress was not on behalf of any particular community or section. Under this flag, the Congress and the Khilafat, the Hindus and the Muslims together infused the fire of enthusiasm in the people of this country; and the Sikh community has made countless sacrifices. Every community in India has shed its blood and has sacrificed its all. This flag does not belong to any particular community. It belongs to us all as a whole. The characteristic feature of the flag is this, that though it belongs to the whole of India, every individual, whether Hindu, Muslim or Christian can claim it as his own, be happy over it and have respect for it.

The green portion in the flag may be taken to represent our Muslim friends, the white one the Christians and other communities and the saffron the Sikhs. Every community is represented in the flag. But it does not mean that these colours merely represent these communities and they have no other significance. There may be other interpretations also of these colours. They represent the Hindus as well. As I have said the characteristic feature of the flag provides ample scope for every one to think it as his own. In the Vedas "Rta" has not been defined but it is all embracing and has been extolled by poets and bards. But no one can identify it with any particular object.

Similarly the great poets have expressed many good ideas in beautiful words about the various virtues of mankind, e.g., truth, beauty, duty, benevolence, kindness and filial devotion. All write on the same subject but in their own way. On the same virtue, one writes some thing and another some other thing. They express different ideas and different emotions in different ways. Similarly in the case of this flag, every one can sing a chorus in praise of the flag according to his own sentiments. Every community can think of this flag as its own. Some people have complained in the press that there should be predominance of Hindu colours in the flag and that the present flag should be changed. They ask if along with other communities, have the Hindus not shed their blood and sacrificed their kin for this flag? How can we forget the call of those Hindu martyrs through whose sufferings and sacrifices, these disgruntled (Hindus) have had the chance to see the dawn of independence? Will it not be sheer ingratitude to them on our part? With due respect, I would like to tell even the most orthodox Hindus that this flag amply represents the Hindu sentiments. This flag is the true expression of the sentiments of the Hindus and Hinduism. The Vedas say that the colour of a flag should be red.

The *Atharva Veda* says: "Arunah Santu Ketavah" i.e., the flags should be red. Therefore according to the Vedas the flag of the Hindus should be red. Besides this, let us interpret it in a different way. The red colour at the top represents fire and the sun. The white represents the moon. Now according to the Hindu mythology, the first thing that the Creator (Brahma) did was to create the sun and the moon. The Hindus, the Aryans—have since their very beginning been worshipping the Sun, Fire and the Moon. The Sun and the Moon are worshipful deities. This flag represents these very gods—the fire, the sun and the moon. The green colour at the bottom, as I have said, should be taken by our Muslim friends to represent them. But at the same time, this colour in a way represents the Hindus as well. You know of all the nine planets Budha is supposed to the most important. This green colour represents the Budha. This very Budha according to the Hindu mythology, is the god of wealth. The green colour of Budha is the emblem of prosperity and happiness of society. That colour is given in the flag. What better flag, can the Hindus adopt for themselves, than the present one, which represents the Fire, the Sun, the Moon and Budha? Apart from this, there is a 'chakra' (wheel) in the centre of the flag. This is very significant. The Hindus attach great importance to 'avatars'. When there is too much of vice, suffering and disturbance on the earth, according to the Hindu mythology, some Divine Being comes on the stage to establish order and guide the world to the path of virtue. This Divine Being is known as our Avatar. Lord Krishna was the incarnation of God. So also was Lord Buddha. "Sudarshan chakra" was the divine weapon of Lord Krishna. Every Hindu knows of 'Sudarshan Chakra'. That 'chakra' or wheel is embodied in the flag. Hindus consider Lord Buddha as an Avatar and the Chakra on the flag represents Lord Buddha as well. And, if the Hindu beliefs are correct, the final incarnation or divine being has already appeared on the earth to rid humanity of the present terrible turmoil and vices, and to re-establish peace, justice and order in the world. That Divine Being is amongst us. It is Mahatma Gandhi. We may not acknowledge him today, as such, but after some time, the Hindus will consider him as the latest Avatar. His dear charkha is embodied on the flag. So, I can say that every one has got a pleasing feature in the flag and particularly the Hindus. As I have explained, every part of the flag is consistant with the religious sentiment of the Hindus. Therefore, far from opposing it, Hindus should adore it and should be prepared to sacrifice their all to protect its honour. I am fully satisfied with the flag, but as some people wanted some addition and alteration in it, I thought it advisable to satisfy them without making any change in the flag and for this I have made an attempt. I would like to assure them that due consideration was given to their proposals and feelings but finally it was decided that the flag under which the whole country, including those who are opposing it today; fought for freedom, should be adopted as the national flag. After the change that has been made in the flag, no Hindu should have any ground for any dissatisfaction.

[Pandit Govind Malaviya.]

Sir, it is our country that has always guided the world. It has brought the world from darkness to light. As in the past, this country has fortunately for the world produced the greatest man of the time, who amidst all the crowding miseries of mankind and under the shadow of the dark clouds of the third world war, preceded by two great wars that destroyed the world, is still standing solid like a rock and a beacon for the world. He is proclaiming that madness should be given up. If the world follows him, there would be Peace and Prosperity. This flag bears the dear emblem of Mahatma Gandhi.

I pray to God to bestow on us the strength and the wisdom to lead ourselves and the whole world to its desired destination. It is India and he alone that can guide the world to its goal. It is India alone that can be expected to do good to the world.]*

Mr. Tajamul Husain: I want to speak a few words. My name is not on the list but I will not exceed two or three minutes. Have I your permission?

Mr. President: No. I have got more than 25 names on the list.

Mr. Tajamul Husain: I hope I will have your permission afterwards.

Mr. President: I would request the speakers now to shorten their speeches as we have got only forty minutes more, so that I may be able to give an opportunity to as many speakers as may wish to speak. I suggest two minutes for each speaker.

I call upon Dr. Joseph Alban D'Souza to speak.

Dr. Joseph Alban D'Souza (Bombay: General): Mr. President, I give you, Sir, and the House a guarantee that I am not going to exceed more than 2 or 3 minutes. I stand here at this Assembly rostrum first as an Indian and then only as an Indian Christian (*Hear, hear*), because Sir, on this day when the National Flag has been introduced and planted there is jubillation and joy all over the Nation, first in every Indian Home and along with that in the home of every Indian Christian. Sir, the Mover of this Resolution, the great Pandit Jawaharlal Nehru, has in an eloquent and brilliant manner told us how this Flag represents, in the first place, the brilliant and great traditions of the past and equally brilliant historic conditions of the past. Then Sir, he went on to tell us what it represents at present. At present he told us it represents the ups and downs that have occurred in the progress towards freedom and above all, he told us that it represents the triumphant conclusion of our fight for freedom. Sir, it is only meet and proper that the Mover of this Resolution should have been the great Pandit Jawaharlal Nehru and why? Because of his great personality. Sir, what do I mean by his great personality? If I am to express it as briefly as I can and at the same time give it all the significance I can, it is this. His personality, Sir, is based on an all sacrificing and all selfless character, and because it is all sacrificing and all selfless, it is all-pervading, all-permeating and

]* English translation of Hindustani speech ends.

all-conquering. I need not say a word more on this. It is not necessary because the whole of India, nay, Sir, the world knows how this great son of Mother India has immolated himself on the high altar of the Indian Nation. Sir, I think my time is coming to a close. I shall express my heartfelt desire for the progress of India under the aegis of the Flag that has been accepted to-day, by a small Latin quotation :

"Vivat, Crescat, floreat India"

which rendered in English means—'May India under the aegis of this Flag live, grow and flourish, to the lasting advantage and glory not only of the teeming millions of citizens of India but may I add, Sir, to the lasting glory and advantage of the world at large! This Sir, is the prayer of this humble Indian Christian. (*Cheers.*)

Mr. Jai Narain Vyas (Jodhpur State) : *[Sir, I need not say much in praise of the National Flag. I want to associate myself on behalf of the politically backward people of the States, with the chorus of tribute paid to the flag. Under this flag not only the people of the provinces but the States people too have fought for freedom, economic and social, and for liberation from foreign yoke. Our struggle in the States has been associated with this flag and with the Mover of the Resolution relating to the flag, Pandit Jawaharlal Nehru. Without his guidance the movement of the States people and their progress would not have attained the momentum it has. Today Pandit Nehru's name is associated with the flag. Our feelings and sentiments are the same as those of Pandit Nehru. Previously there was a *Charkha* on the flag and now a *Chakra* has been substituted for it. This *Chakra* is the symbol of activity. Under the *Charkha* flag the people of ten provinces have already attained freedom but the people of the States have yet to attain it in certain respects. I mean we have to attain responsible government in States. We do not mean to remove our ruling princes but we want to have full responsible government under them. There is no doubt that we will attain our objective under this flag. This is our national flag. It belongs to all the communities of India—Hindus, Muslims, Sikhs and Parsis. Let it fly everywhere in India and on the Viceregal Lodge, on the hamlets of the peasants and on the palaces of the princes. With these sentiments I pay my homage to the Flag.]*

Shri S. Nagappa (Madras : General) : Mr. President, Sir, I rise to support the Resolution before the House, moved by our revered leader Pandit Jawaharlal Nehru. Sir, this is the Flag under which we have during the last sixty years marched on and have at last reached victory. We are proud of this Flag. In it there are three colours and these three colours represent the three communities in our country who are united into one. The Flag denotes also what the country desires. We do not desire to capture other countries, we do not want to be imperialistic, we do not want to see other countries bowing to us. All that we want is that our Flag should fly all over the world as the Flag symbolising peace, progress and prosperity. That is the aim of our country.

*[ ] English translation of Hindustani speech.

[Shri S. Nagappa]

Mahatma Gandhi was kind enough to introduce in the Flag the emblem of the poor man—the industry by which the poor man ekes out a livelihood—the *Charkha*. Sir, I come from the *Harijan* Community which depends very much on spinning and Mahatma Gandhi has rightly put the *Charkha* on the Flag. Pandit Nehru was kind enough to say that this emblem should be on the other side also, if it is put on one side. But the *Chakra* represents not only the *Charkha* but it happily represents the progress of the country and it represents the rising Sun, the rising Sun of the independence of our country. We have been living for two hundred years in slavery, and now we are at last seeing the Sun of independence rising in our country.

This *Chakra* represents also the great *Vishnu Chakra*—the wheel of the world that was able to take the whole world to peace, progress and prosperity.

Sir, it is very easy to have a Flag, to hoist the Flag and see it fly over buildings. But every man must know how to keep the honour of the Flag. The man who keeps the honour of the Flag keeps the honour of the whole Nation. The higher the Flag flies, the greater is the honour of the Nation.

Hitherto, this Flag was called the Congress Flag. Now it cannot be called the Congress Flag, it will be called the Indian National Flag. Everyone, whether he be a Muslim, Hindu or Christian, will own this Flag. He has to defend it and stake even his life, if need be then alone will the honour of our country be high in the eyes of the world.

Mr. Lakshminarayan Sahu (Orissa: General): Sir, I wholeheartedly support the Resolution that has been so ably, wonderfully, and may I add, magically moved by Pandit Jawaharlal Nehru. The Flag that has been presented to us reminds me of my own place in Orissa. There is the temple of Jagannath in Orissa over which for over a thousand years the Eternal Wheel called the *Neela Chakra* has been standing; and with it is associated the Flag called "*Patita Pavan Vana*", that is, the flag which represents the poor people, the untouchables. I wish that on this occasion all our leaders would make an effort to throw open the temple of Jagannath to the so-called untouchables who are denied admission into it to-day.

This wheel on this Flag reminds me also of many associations connected with Kalinga and Magadha to which latter place you, Mr. President, belong. Asoka from Magadha went over to Kalinga and fought a great battle. After very heavy carnage, he was turned into a gentle being—the gentle Asoka; and it is there that the Kalingas in a way conquered Asoka. When I see this Flag here, associated with the name of Asoka and also with Buddha, I am reminded that our country, Kalinga, after a great battle taught a good lesson to Asoka—a non-violent one. There are two places in Orissa even to-day where the edicts of Asoka are standing, to tell the world that we must serve all countries and all humanity, irrespective of caste, creed, colour and so on. In fact, I feel that this Flag of ours is not only National, but it is in a way International because the wheel represents the wheel of eternity. Therefore, all of us, I say, even

those of us who were not with the Congress till yesterday will respect this Flag. This is the Flag which has become entirely National, completely National today when the Resolution about this National Flag was moved so ably by Pandit Jawaharlal Nehru.

When I see the three colours on this Flag, I am reminded also of the three images inside the temple of Jagannath. Lord Jagannath represents the blue colour, Balaram represents the white and Subhadra Devi represents the yellow colour, with Lord Jagannath and Balaram on either side of Subhadra Devi, in a way defending the women folk. This symbol I worship because in a way it is the symbol of my country,—the place from where I come to sit in this Constituent Assembly as a member.

I therefore, whole-heartedly support the Resolution so ably moved by Pandit Jawaharlal Nehru.

Rev. Jerome D'Souza (Madras: General): Mr. President, I thank you, Sir, for giving me the opportunity to join in the chorus of the expression of happiness on this very auspicious occasion, when India, without distinction of religion or caste or creed, province or section, accepts a National emblem that will represent her in the councils of the world. Sir, some of us who have seen public demonstrations and pageants in foreign countries, have felt humiliation at seeing our own great land, its vast peoples, its ancient heritage and culture and its incomparable beauty unrepresented in these pageants. And when these strangers looked at us we had to bow our head in humiliation knowing that in this Comity we had no independent representation. Sir, today this humiliation ends and if such a pageant should take place, the children of India who may be present there will share the pride with which other nations greet and honour the symbols of their country fluttering in the air and their hearts will rejoice as their Flag will rise in the breeze. That, Sir, is one aspect of it which, I think, will come home to all of us with peculiar satisfaction.

Better than most people, I take it that our people understand the meaning of symbolism, of ritualism—the significance of the hoisting of this Flag and all that it stands for. Such is our love of ritual, such is the imaginative wealth with which we surround symbols and signs. Ours is a very happy and singularly well-conceived symbol with its harmony of colour and with its unique idea of a circle in the centre into which such a wealth of meaning can be concentrated. Sir, I am sure many of those who were present will recall the historical occasion when this very noble building in which we have gathered was inaugurated. On that day the Viceroy of the day, Lord Irwin, referred to the circular construction of this building and alluding to one of the noblest of Christian English poets, quoted his lines, that he had seen "eternity as a circle of white light". Sir, this circle, this wheel, which represents so many things—time and its revenges, industry and all its achievements—represents for us also eternity and the values of eternal life.

[Rev. Jerome D'Souza.]

Pandit Jawaharlal Nehru referred to these spiritual values by which a nation lives and which should be represented by this Flag. Nothing could be more appropriate and admirable than this circle to represent those spiritual values. This is the symbol with which India will continue its fight. May I be permitted to say that India will continue its struggle also for peace, and that just as her soldiers will be encouraged and uplifted by the sight of this Flag in all righteous warfare against unjust enemies, so also this Flag will stand as a reminder of our love of peace. May it help us to go forward in all righteous work and see that all social wrongs are righted. Above all, in every case of fratricidal warfare, of strife, among ourselves, when injustice is done, when tempers rise, when communal peace is broken up, may the sight of this Flag help to soften the harsh and discordant voices, and help us to stand together, as we have gathered today in unanimity, in happiness in brotherly feeling to salute this, our National Flag.

Mr. President: There are yet a number of speakers on the list but I had promised earlier that I will call Mrs. Naidu to make the final speech. So I request her to address the House.

Mrs. Sarojini Naidu (Bihar: General): Mr. President, the House knows that I had refused over and over again this morning to speak. I thought that the speech of Jawaharlal Nehru—so epic in its quality of beauty, dignity and appropriateness—was sufficient to express the aspirations, emotions and the ideals of this House. But I was happy when I saw the representatives of the various communities that constitute this House rise up and pledge their allegiance to this Flag. I was especially reminded by the people that sit behind me from the Province of Bihar that it was at the risk of my life and seat in their province, should I forget to mention that this Flag, so willingly and proudly accepted today by the House, has for its symbol the *Dharma Chakra* of Asoka, whom they claim (I do not know with what historical veracity) to be a Bihari! But if I am speaking here today, it is not on behalf of any community, or any creed or any sex, though women members of this House are very insistent that a woman should speak. I think that the time has come in the onward march of the world-civilisation when there should be no longer any sex consciousness or sex separation in the service of the country. I therefore speak on behalf of that ancient reborn Mother with her undivided heart and indivisible spirit, whose love is equal for all her children, no matter what corner they come from, in what temples or mosques they worship, what language they speak or what culture they profess.

Many many times in the course of my long life, in my travels abroad—for I am vagabond by nature and by destiny—I have suffered the most terrible moments of anguish in free countries, because India possessed no flag. A few of those moments I would like to recall.

On the day when peace was signed at Versailles after the last war, I happened to be in Paris. There was great rejoicing everywhere and flags of all nations decorated the Opera House. There came on the platform a famous actress with a beautiful voice, for whom the proceedings were interrupted while she wrapped round herself the flag of France. The entire audience rose as one man and sang with

her the National Anthem of France—the Marseillaise. An Indian near me with tears in his eyes turned to me and said "When shall we have our own Flag?" "The time will soon come", I answered, "when we shall have our own Flag and our own Anthem".

I was asked to speak at a peace celebration in New York soon after the peace had been signed. Forty-four Nations had their Flags fluttering in the great hall in which the Assembly met. I looked at the Flags of all the Nations and when I spoke I cried that though I did not see in that great Assembly of Free Nations the Flag of Free India, it would become the most historic Flag of the world in the not distant future.

It was also a moment of anguish for me when a few months later forty-two Nations sent their women to an International Conference in Berlin. There they were planning to have, one morning, a Flag parade of the Nations. India had no official flag. But at my suggestion some of the women Indian delegates tore strips from their saris, sitting up till the small hours of the morning to make the Tri-colour Flag, so that our country should not be humiliated for the lack of a National Banner.

But the worst anguish of all was only a few months ago, when on the inspiration of Jawaharlal Nehru the Nations of Asia met in Delhi and affirmed the unity of Asia. On the wall behind the platform there was the flag of every nation of Asia. Iran was there, China was there, Afghanistan was there, as also Siam. Big countries and little countries were all represented but we had exercised a self-denying ordinance, so that we might scrupulously keep our pledge that no party politics would be permitted at the conference. Can you not understand and share with me the anguish of that decision which excluded the Tricolour of the Congress Flag from the Asian Conference? But here today we retrieve that sorrow and that shame: we attain our own Flag, the Flag of Free India. Today we justify, we vindicate and we salute this Flag under which so many hundreds and thousands of us have fought and suffered. Men and women, old and young, princes and peasants, Hindus and Muslims, Sikhs, Jains, Christians, Zorostrians, all of them have fought under this Flag. When my friend Khaliquzzaman was speaking, I saw before me the great patriots, my friends and comrades of the Muslim community who had suffered under this Flag. I thought of Mahomed Ali, of Shaukat Ali, of Ansari and of Ajmal Khan. I could mention the smallest community in India, the Parsi community, the community of that grand old man Dadabhai Naoroji, whose grand-daughters too fought side by side with the others, suffered imprisonment and made sacrifices for the freedom of India. I was asked by a man who was blind with prejudice: 'How can you speak of this flag as the flag of India? India is divided.' I told him that this is merely a temporary geographical separation. There is no spirit of separation in the heart of India. (*Hear, hear*). Today I ask one and all to honour this Flag. That wheel, what does it represent? It

[Mrs. Sarojini Naidu]

represents the *Dharma Chakra* of Asoka the Magnificient who sent his message of peace and brotherhood all over the world. Did he not anticipate the modern ideal of fellowship and brotherhood and co-operation? Does not that wheel stand as a symbol for every national interest and national activity? Does it not represent the *Charkha* of my illustrious and beloved leader, Mahatma Gandhi and the wheel of time that marches and marches and marches without hesitation and without halt?. Does it not represent the rays of the Sun? Does it not represent eternity? Does it not represent the human mind? Who shall live under that Flag without thinking of the common India? Who shall limit its functions? Who shall limit its inheritance? To whom does it belong? It belongs to India. It belongs to all India. Pandit Jawaharlal Nehru told us that India has never been exclusive. I wish he had added: 'India welcomes all knowledge from friend and foe alike'. Did she not? Have not all the cultures of the world contributed to the ocean of her culture? Has Islam not brought to India the ideals of democratic brotherhood, the Zorostrian his steadfast courage, who fled from Iran with a blazing log from their fire-temple, whose flame has not perished these thousand years? Have not the Christians brought to us the lesson of service to the humblest of the land? Has not the immemorial Hindu creed taught us universal love of mankind and has it not taught us that we shall not judge merely by our own narrow standard but that we should judge by the universal standard of humanity?

Many of my friends have spoken of this Flag with the poetry of their own hearts. I as a poet and as a woman, I am speaking prose to you today when I say that we women stand for the unity of India. Remember under this Flag there is no prince and there is no peasant, there is no rich and there is no poor. There is no privilege; there is only duty and responsibility and sacrifice. Whether we be Hindus or Muslims, Christians, Jains, Sikhs or Zorostrians and others, our Mother India has one undivided heart and one indivisible spirit. Men and women of reborn India, rise and salute this Flag! I bid you, rise and salute the Flag. (*Loud cheers.*)

Mr. President: I would ask Members to express their assent to the Resolution which has been placed before them and show their respect to the Flag by getting up and standing in their places for half a minute.

The motion was adopted, the whole Assembly standing.

Mr. President: I have to make one announcement before we adjourn. A question was put to me yesterday about the future programme. I have had consultations with some of the Members and with the staff of the Constituent Assembly. I am in a position to state that it is possible to complete the discussion of the Report of the Union Constitution Committee within this month and, if we do that, say by the 30th or 31st of this month, we might adjourn this session. We shall be required to be here again on the 15th of the next month when power will be actually transferred to the people's representatives by the Representative of the British Government.

When Members come here for that function I suggest that we might continue our sittings after the 15th August and take up the Report of the Union Powers Committee. If this is acceptable to the House (*Hon'ble Members*: 'yes') we may also have the Report of the Minorities Committee and we may hope to dispose of that also during the next session.

The Honourable Pandit Jawahar Lal Nehru: Mr. President, Sir, may I respectfully suggest that these two Flags which have been displayed this morning may be specially preserved and subsequently deposited in the National Museum. (Applause.)

Mr. President: I accept that suggestion.

An Honourable Member: I request you on behalf of the House to convey our homage to Mahatma Gandhi and tell him that we are observing the day very magnificently.

Mr. President: I will do that with the greatest pleasure.

The Assembly then adjourned till Ten of the Clock, on Wednesday, the 23rd July 1947.

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CONSTITUENT ASSEMBLY DEBATES

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 23rd July 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 THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION—*contd.*

Mr. President: We shall take up discussion of Clause 15 of the Provincial Constitution, which was held over the other day. That Clause was moved and amendments were also moved. So the Clause as also the amendments are now open to discussion.

Mr. B. M. Gupte (Bombay: General): Sir, before I proceed to the arguments in support of my amendment, I should like briefly to indicate the difference between my amendment and the original Clause and other amendments. In my amendment I have retained the first two sub-clauses of the original Clause. Then I should like also to emphasize that the ultimate authority who has to deal with the emergency is the same in both, namely, the President of the Union. The only difference between my amendment and the original Clause is that when an emergency arises the original Clause provides that the Governor shall report to the President of the Union, while I have suggested that the Governor may, if necessary, take immediate action and then report to the President. Pandit Kunzru's amendment, I think, merely reiterates and clarifies the original Clause. Then there remains Mr. Munshi's amendment. Essentially Mr. Munshi's amendment is not different from mine but it is something more. It is a redraft of the entire Clause as it would stand if modified by my amendment.

Proceeding with the argument, I should like to submit, first of all, that the scheme as provided for by the original Clause cannot work at all. Under sub-clause (1), an onerous responsibility has been thrown on the shoulders of the Governor, namely, the responsibility to prevent any grave menace to the peace and tranquillity of the Province. What is the power given to him to meet such a heavy responsibility? It is the power merely to report to the President of the Union, if at all it can be called a power. Even this power,—when is it to be exercised? Not until and unless the Governor has tried and failed to persuade his Cabinet to initiate legislation which he considers essential for the purpose of meeting this emergency. My submission is that if a problem lends itself to solution by the protracted processes of legislation, then it is not a grave menace at all. If it is otherwise, *i.e.*, if it is really a grave menace, then some negotiation, some discussion with the Ministry is bound to entail delay which no really grave menace can tolerate. For a grave menace does not come in a leisurely

[Mr. B. M. Gupte.]

fashion. It is a sudden flare up, a violent eruption. In such circumstances, a mere power of reporting is absolutely of no avail. If the Governor has to discharge his responsibility with some chance of success, he must act immediately and for that purpose, he must have the necessary power. That is what has been provided for in my amendment.

It does not therefore mean that my amendment seeks to give unrestrained, unrestricted power to the Governor. In the first place it is stated that he shall act only when immediate action has to be taken. If no immediate action has to be taken, the Governor cannot act. If there is time to communicate with the President and receive instructions, the Governor shall not act. Why should he take responsibility unnecessarily? If there is no time, he shall take initial action and forthwith communicate it to the President. Of course, I may be told that it is the Governor who has to judge whether immediate action has to be taken. I admit it is the Governor who has to judge. But I submit that if he acts wrongly, there is the President to correct him immediately. If he acts perversely, there is the sword of impeachment, hanging over his head.

Then it is provided that he shall not assume the powers of the High Court. The High Court is the bulwark of civil liberties and its authority must ever remain unimpaired. That is another safeguard. Then, the Governor shall have to communicate his proclamation to the President and he shall abide by his directions later on. It means that it is only for two or three days that this power is given to the Governor. As soon as the President has got seized of the matter, the Governor's power comes to an end. Of course, I have provided that the proclamation is to last for 15 days, at the most. If it does last so long the responsibility will not be that of the Governor, but that of the President. Therefore, it is evident that my amendment is designed merely to enable the Governor to hold the fort till the President takes the situation in his own hand.

Then, I am told that in these days, when distances have shrunk tremendously owing to the telephone, the radio and the aeroplane, it will not be necessary to give this extraordinary power to the Governor, and it is enough merely to report to the President. I submit that the very forces which have caused this shrinkage of distances have also contributed to the intensification of the tempo of life and situations which took some time to develop in the placid old days, develop today with baffling rapidity. This argument therefore does not affect the merits of my case.

There are other more thorough-going objectors, and from the order paper it is evident that some of them have expressed their opposition by tabling amendments for the deletion of the entire Clause. These gentlemen are not satisfied that there should be any emergency power at all either to the Governor or to the President. I am afraid they

forget that we are living in a revolutionary age, we are living in almost perilous times. The whole world has become a seething cauldron of economic unrest and political turmoil. A spirit of violence is abroad. It is only three days ago we witnessed one of the ugliest manifestations of it in Burma. Even in India we share these world conditions, and our own peculiar problems have aggravated them. Horrible tales of arson, murder and loot continue to be our daily fare of news. Nobody has any doubt that a new and a great India is being born. But I submit that the new India cannot quickly grow and prosper to its noble destiny unless we are able to maintain the frame work of well-ordered society through this stormy and critical period of our history. The whole atmosphere is explosive. Nobody knows when and where the situation will explode. It has therefore become imperative that apart from the machinery of the Government, there shall be reserved somewhere power to deal with a serious threat to law and order promptly and efficiently. When immediate action has to be taken, it is obvious that that authority must be a man on the spot. If it is to be the man on the spot, who else can that man be other than the Governor, who is elected on the widest franchise? No doubt, in most cases, the Ministry will be able to weather the storm and practically in no case will this extraordinary power be called into action. We shall all be glad if the power rusts in the Statute Book. But occasions may arise when the Ministry may not be able to act as efficiently and promptly as we expect it to do. For such circumstances, power must be reserved in the hands of the Governor.

We are told that this will be an encroachment on Ministerial responsibility. I ask, if the President, in the interests of law and order, can override the popular Ministry, why not the Governor, who is admittedly the head of the province, is much nearer home, and who also is an elected popular leader?

In conclusion, I say if this power, restricted in its scope and hedged round with safeguards, cannot be trusted even for two or three days to a man who has been elected on a wave of popular enthusiasm, and who enjoys the confidence of the overwhelming mass of the people of the province, then the position of the Governor is reduced to that of a dummy and a costly dummy at that; costly both to himself and to the province. For both of them will have to spend lots of money and energy for the adult franchise election. I hope the House will agree that this is not a satisfactory position for a Governor who has been elected on adult suffrage.

That does not mean that I advocate that power should be given merely for the sake of power or merely for the sake of position and prestige of the Governor. I only say, that there may be an emergency, and it has to be provided for and power has to be given to somebody. There is the Governor elected on adult franchise; he enjoys the confidence of the people. Why should he not have the confidence of the framers of this Constitution? Therefore, I commend my amendment to the acceptance of the House.

The Honourable Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, I move:

"That for Clause 15, the following be substituted:

'Whenever the Governor is satisfied that there is a grave menace to the peace and tranquillity of the Province or any part thereof, he may, in his discretion, report to the President of the Federation,"

The three amendments that have been moved relate to the same important subject because law and order are the foundation, not merely of the State but of society. It is not surprising therefore that we should be anxious to include such provisions in the Constitution as would ensure the maintenance of peace and tranquillity. But we have to think carefully regarding the means that we should adopt to achieve this object. I propose to deal only with Mr. Munshi's amendment in this connection, as Mr. Gupte himself has said it was better drafted and more comprehensive than his.

Sir, Mr. Munshi's amendment is practically a reproduction of Section 93 of the Government of India Act, 1935. Before we adopt the method laid down in this Act, we should clearly understand the scheme that is embodied in it. This Act did not confer full responsibility on us. The Ministers, though they occupied an important position, were not masters of the situation in their own provinces. The Governor enjoyed Legislative and administrative authority in important fields. In fact, it would be true to say that so far as the Provincial part of the Constitution was concerned, he occupied a central position. Now, do we desire that the Governor in the new order should be as important a figure as he was till the other day? I do not think, Sir, that there is any reason why we should base our Constitution on that distrust which permeates the Government of India Act, 1935. The British Government were afraid that the Indian Ministers would so use their power as to bring about a deadlock and make the maintenance of the British authority impossible. They therefore imposed checks on the authority of the Ministers. Now, surely, we cannot proceed on the same basis. We must trust our Ministers and they must be the central figures in the Provincial Government.

Sir, some members may be influenced by the example of America where the States have Governors who have the power to maintain law and order. But in the American States there is no responsible Ministry. Besides, even in those States where the powers of a Governor are limited, he occupies the most important position in the eyes of the people, both in the politics and the Government of the State. He further controls the Militia and the Central Constabulary or the State Police Force, if any. He therefore, occupies a position all his own. We cannot by any means reconcile the Presidential and the Cabinet systems. It seems to me therefore that the very principle on which Mr. Munshi's amendment is based cannot be acceptable to us. The Report of the Provincial Constitution Committee proceeds on a

different basis from that on which the British authorities proceeded when they placed the Government of India Bill in 1935 before the British Parliament.

Apart from this, Sir, let us consider how the Governor could act under the Government of India Act, 1935. He was given adequate powers to enforce his decisions. He could take upon himself all the functions of Government when it could not be carried on in accordance with the provisions of the Act of 1935. He controlled the services too. The All-India services connected with district administration which were under the control of the Secretary of State were immediately responsible to him for their actions. Again, so far as the Provincial services were concerned, their members had a right to appeal to the Governor. Besides, one of the special responsibilities of the Governor was to protect the rights and interests of the members of the Services. The members of all the Services, whether Imperial or Provincial, were there under the ultimate control of the Governor. Apart from this, no change could be made in the rules relating to the organisation and discipline of the police force without his sanction. His authority over the provincial executive agencies was therefore complete. The Governor under the Constitution as it is likely to be,—I mean a Constitution based on the principles laid down in the Report before us—will not enjoy these powers which will be made over to the Minister. How will he then to be able to have his orders carried out? His position will be an exceedingly difficult one. He may be an elected authority but in the case of a conflict between him and the Ministers, the position will be one of great embarrassment both for him and for the Ministers. The difficult position in which Ministers will be placed is obvious. Their prestige will go down in the eyes of the public and the services to the extent that the Governor is able to control the Services, and this will undoubtedly lead to administrative complications. They will be in the same predicament in which they are now *vis-a-vis* the Governor. Sir, we have to consider whether the method that has been suggested of ensuring the maintenance of law and order will be suitable on general grounds for securing the object that we have in view. Is it desirable that we should allow one man to sit in judgment, so to say, over the Ministers? However wise a Governor may be and by whatever method he may be selected, I submit that it is highly undesirable that his personal view should prevail over the collective view of the Ministers who will be better informed than him. That is another argument and I think a very strong argument for not agreeing to the amendment that has been moved by Mr. Munshi.

Now, Mr. Gupte said—and perhaps Mr. Munshi will say—that the power that has been conferred on the Governor can be exercised by him only in the event of a grave menace to the peace and tranquillity of the Province. Under Section 93 of the Government of India Act, 1935, the Governor can take over the entire Government only when he is satisfied that the government of the Province cannot be carried on as contemplated by that Act, but it is provided in sub-section (5)

[Pandit Hirday Nath Kunzru.]

of that Section that "the functions of the Governor under this Section shall be exercised by him in his discretion" and that "no proclamation shall be made by a Governor under this Section without the concurrence of the Governor-General in his discretion." Those who rely on the present Government of India Act should thus realize that whatever the power conferred on the Governor by Section 93 he could take no action without previously consulting the Governor-General. Mr. Munshi's amendment will therefore confer greater power on the Governor than the Act of 1935 does. Now, it may be said that, even if the amendment is passed, it will still be possible for the Governor-General to decide finally whether the Governor's action was justified. I submit, Sir, that the position of the Governor General will be seriously prejudiced if the Governor takes action of a drastic character without waiting for his decision. If the Governor issues a proclamation assuming all the powers and functions of Government, it is obvious that if the Governor-General disagrees with him he will be forced to resign, but on the other hand, if the Governor-General owing to this consideration, desists from instructing the Governor to withdraw his proclamation he will place himself in a very difficult position. He will be acting against his own judgment and making himself responsible for the consequences of a policy which he disapproves. Mr. Gupte thought that his amendment gave power to the Governor to act on his own initiative for a very short time, and that that was all the difference between his amendment and Clause 15 of the Report. This may seem to be a trifling difference to Mr. Gupte, but to me it seems to be a vital difference. If the Governor-General is really to be in a position to decide what action should be taken, I think it is imperative that the Governor should not be allowed to prejudice the position by over-ruling his Ministers and taking over all authority from them.

I am sensible, Sir, as I have already said, of the fact that this House is very anxious that law and order should not be allowed to break down in any event. The question therefore to be considered is whether we can achieve the end in view without conferring on the Governor the power that would be vested in him if Mr. Munshi's amendment were passed. I have already said that if a Provincial Ministry is to be over-ruled it should not be over-ruled by a single man. It should be over-ruled by some authority which would enjoy a more important position in the eyes of the public than the Provincial Ministry. Besides, it is desirable that the collective opinion of the Provincial Ministry should be set aside not by one man but by a body of men who can take into account the circumstances not merely of one Province but of the whole country. We have such an authority in the President and the Federal Government. I submit therefore that such reserve powers as you want to assign to any authority for ensuring the peace and tranquillity of a province should be vested in the Central Government. The Central Government in every country is ultimately responsible for the peace of the country and for every

part of it. Since it bears this responsibility, let it be possessed also of the powers required by it to fulfil this responsibility. I submit therefore, Sir, that my amendment is much better than the amendment moved by Mr. Gupte or Mr. Munshi. It is in accordance with the view propounded by Mr. Patel when he moved the consideration of the Report on the Principles of the Provincial Constitution. It achieves all that we want without bringing the Governor and his Ministry into conflict and placing on him a responsibility which he cannot discharge unless the Services are in the last resort made answerable to him. This would be going back to the scheme of the Government of India Act which we have been condemning all these years. I think, Sir, that we are debarred by our principles from accepting the view embodied in this amendment. We must, therefore, adopt the only method permissible in a Constitution which is based on the doctrine of Ministerial responsibility. The solution that I have proposed will not be inconsistent with the principles underlying a Federal Constitution. If my view is accepted, it will only mean that the Central Government would occupy a strong position in regard to the maintenance of law and order. This certainly does not militate against responsible government or federal government; and since there is a way, Sir, of ensuring the peace and tranquillity of the country by acting on this principle, without infringing the basic ideas that lie at the bottom of responsible government, I venture to commend my amendment to the attention of the House.

Shri T. Prakasam (Madras: General): Mr. President, Sir, I heard with great interest and attention the argument of Pandit Kunzru; but I have not been able to follow him when he said that the power should vest with the Centre and that the Governor when he sees any danger to peace must only report to the Centre and take its orders. (*Honourable Members*: "We cannot hear you") All right.

Apart from the Government of India Act of 1935 or the Act which we are going to pass, it is a matter of mere commonsense that when there is a great danger of a breach of the peace, the man on the spot should have the power to deal with it immediately and should try and prevent it and then report it to the Centre. This is the ordinary commonsense view which is embodied in any statute in any country. And I expect this Constituent Assembly which is a sovereign body, when it is enacting the very first statute, conceding freedom of action and provincial autonomy to the provinces and also establishing freedom for the whole country, taking power away from Great Britain, it will see to it that the law and order does not break down in the very first minute, or in the very first few minutes, and to see that the man on the spot does not have to stand there, looking at the happenings and merely reporting it to the President of the Union Government and trying to get orders from him. I would, submit, Sir, that such a course should not be adopted by this Constituent Assembly. It is against the very elementary principles of doing duty. I do not

[Shri T. Prakasam]

care, Sir, whether it is the Governor, or whether it is the Minister or whether it is a Police Officer that is in charge of this business. That officer, that person on the spot must have the authority to deal with the situation and try to prevent a breach of the peace first. And it is only when the situation goes beyond his power from the very outset or when he is collapsing that he would order for the military or any other source of help from the Centre or from the President of the Union.

Pandit Kunzru was arguing that what was conceded under the Government of India Act of 1935 to the Governor should not be adopted by us here. I was not able to understand him. The Governor under the Government of India Act, 1935, is not the same as the Governor that this Constitution is providing. It is not an Englishman who will be the Governor of a Province. Under this Constitution it is the man who is elected by adult franchise, by the whole Province, who will be the Governor. Having clothed him with such a position and having made him feel that he was the man responsible not to any particular community or section of the Province, but responsible for everyone in the Province who elected him to that office, having clothed him with such a position, is it right for any of us to say, "let him be all this, let him be a man elected by all the people, let him be anything, but we should not entrust him with that authority which the Government of India Act, 1935, had given to the Governors."

Sir, we have been working with the Governors under the Government of India Act, 1935, since 1937. We had to deal with bad situations, very grave situations even during my own short period as Prime Minister. Allow me, Sir, to tell you and the Honourable Members of this House that if the troubles that had overtaken Northern India and other parts of India had not overtaken the South of India, it was not because occasion did not arise for such troubles, but it was because the matters could be dealt with by vigilance on the spot, without waiting for a single minute for anybody's orders. There was a communal clash threatened, of a very serious type in South India. How was that situation met? Not a single death occurred, though it was a very serious situation. How was that prevented? Our Muslim League friends and all the leaders of the people in the Province were also very good and alert. The moment trouble was sensed, at dead of night they came and knocked at our door and said there was danger. What were we to do? We immediately went to the spot. It was Providence that helped us to prevent blood-shed and death. It was the people, both Muslims and Hindus who saved the situation. Members of both communities formed peace committees and they began to parade the area even before the police or the military could come to the spot. And it was managed so well that nothing happened although the whole of that zone all along the railway line from that point to the northernmost point was most inflammable.

Again, let me point out that, during the worst stage of the famine, food trains could not pass from Madras along the line to a distance of fifteen hundred miles. And it was the police who were entrusted with the duty of managing it. When they knew that the train was to be interrupted by the forces that had been organised for that purpose, they were got ready, and protection was given all along the line for 1500 miles so that the food train could pass and the danger could be averted. How could anyone expect the person in charge of law and order or even the Governor who also was having authority under the Government of India Act of 1935 to report it to the Centre, to the President of the Union Government, and await his orders? Is it not very dangerous that such a thing should be done? I did not expect this proposal to come up in this form. I know when this debate was going on in another place the first attack was upon the post of the Governor himself. That I can understand; if you attack the Governor's appointment itself and eliminate him altogether and make the Ministry responsible, that would be a different matter. But it was not so. I must congratulate the leadership and the Provincial Constitution Committee that had drafted this Provincial Constitution. They have lifted up the whole nation in one stroke and saved us from the troubles that had overtaken us till now by reviving adult suffrage. Adult suffrage is not a new thing, as imagined by some of our friends, handed down to us by Great Britain. Adult suffrage you will find inscribed on the stone walls of a temple in the village of Uttaramerur twenty miles from Conjeeveram,—the whole structure of democracy of those days just a thousand years ago,—many of us imagine that it is Great Britain that has given us the democratic process of election; that is not so. You will find on the stone walls of that temple written in the Tamil language an inscription to the effect that there was democratic election carried on then on the basis of adult suffrage a thousand years ago. There was adult suffrage as stated there. There were no wooden boxes which could be used as ballot boxes, but cadjan leaves were used as ballot papers and pots as ballot boxes. That is the way in which they carried on the administration of the country, even in the villages; and it is the misfortune of this country that we have fallen on evil days and came under the rule of different kings. All our ancient things disappeared and we have become slaves, as it were, and whatever has come to us, we imagine as having come from Great Britain. Having revived adult suffrage, having clothed the Governor under that suffrage with a unique position—I am glad it was not copied from the American or Australian or Canadian or any other Constitution—this Committee and this leadership had the vision to see the position of the country at present. How are we to manage matters now? I was an advocate of the British system of democracy and the same was the feeling of some of those friends who have tabled these amendments. I was very anxious that the British system should be copied by us. It was copied by us and we have gone through all kinds of experiences. Our leaders have gone through all kinds of experiences and having regard to all our conditions and sufferings they have suggested this device of an

[Shri T. Prakasa]

elected Governor on adult suffrage by which they have lifted the nation in one stroke to the skies, because they have made every one in this country feel, man and woman, for whom the Congress had been fighting all these years, that at last it is their Government, that they are appointing their Governor, the man who will be responsible to them. The Governor should have power to do something. If something is going on in the presence of the Governor, is he not to interrupt it and prevent it on the spot when it lies in his power? To suggest that nothing should be done and the Governor should not be made to exercise the power of Governor of the 1935 Act is not sound and correct. Anything good may be taken even from the Constitution of 1935. Everybody must accept the proposal without a single word of demur in this matter. I am very sorry that this retrograde step has been proposed that the whole thing should be postponed until the Union President sends reinforcements or advice or gives directions. I earnestly request the House not to accept any such suggestion. We would make the whole world laugh at us if we say that without meeting a situation on the spot he must come to this place. We will be making fools of ourselves if we adopt this amendment.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, the motion before the House raises a vital issue and I would request the House very carefully to consider the pros and cons with meticulous care before they come to any decision. Sir, coming from an unfortunate part of this country where the breakdown of the machinery of law and order and the non-intervention of the administrative head in the matter has been causing tremendous bloodshed and incalculable suffering and hardship, I feel called upon to put in a few words in support of the amendment moved by my Honourable friend Mr. Munshi. What does this amendment seek to achieve? It proposes certain extraordinary powers for the Provincial Governors to be exercised by them in their discretion in very emergent circumstances. The House will note carefully that these powers do not form part of the ordinary routine work of the Governor; it is no part of his normal duty as Governor, but these powers are to be exercised by him only in emergent circumstances, if circumstances so demand that swift action is essential for preventing a total collapse of the machinery of law and order and even for restoring the machinery of law and order if it has already been thrown out of gear. I ask every member of this House whether he really wants to deprive the administrative head of a power like that to be exercised by him only in emergent circumstances. I quite appreciate the good point made by my Honourable friend Pandit Kunzru but one may respectfully differ from him. I want to point out to him that I have no very strong criticism to make against Section 93 of the Government of India Act, 1935. In my view that Section embodies certain very valuable provisions. Our only grievance is that the provisions of Section 93 have more often than not been abused and not properly used. After all is said and done even best Constitu-

tion in the world may not be of any use to the people if the people have not the determination and understanding and good will to work it in the spirit in which it is conceived. Who, after all, is the Governor that will be appointed hereafter under the new Constitution? He is not going to be a foreign Governor. He is going to be an Indian. He is not going to be a nominated person. He is going to be elected on universal adult suffrage and as such he will command the respect and confidence of the people. He will have tremendous prestige behind him. Now, after choosing a person like that for that office, do you propose to keep him in the Government House as a dummy or do you want him to do some work for you when circumstances demand swift and immediate action? There are occasions when he will have to act quickly. I quite understand that there is possibility of this power being abused. But let me tell you that this fear is more imaginary than real. The occasions on which he may be called upon to exercise this power would be very rare. What are the objections against this amendment? It is said that the Governor will not have any power over the administrative officers and therefore his intervention would be ineffective.

Now I ask my Honourable friend Mr. Kunzru whether the Union President will have absolute power over the administrative machinery of the Provinces. So in the ultimate analysis the Provincial authority in such cases will not be divorced from that of the head of the Union. There are two checks provided. In the first place the Provincial Governor will be called upon to act immediately and simultaneously report to the Union President the causes which led him to take some particular action. Now, is it expected that a Governor who is elected and entrusted with very grave responsibility, who is liable to be arraigned and impeached if he acts in contravention of the Constitution, will act in an arbitrary and thoughtless manner? I do not believe he will. I believe on the other hand he will act correctly and effectively.

Further, at the most this emergent action will be only a question of a couple of weeks. From the provisions it is clear that the proclamation will cease to operate at the expiration of two weeks unless ordered by the Governor himself or the President of the Union. So, unless he finds that the Ministry is divided and there is breakdown of law and order and that the position would deteriorate if prompt action is not taken he will not step in; and when he does he will forthwith report to the Union President who is armed with extraordinary powers. For these reasons I think there should be some provision in the Constitution by which the ultimate responsibility for the maintenance of law and order and responsibility for preventing the breakdown of the administration should be broadly and squarely laid on the shoulders of some person and that person should be the Governor. That function must be entrusted to him for the limited purpose. Sir, I support this amendment.

Mr. President: Before I call upon any other speaker, I desire to say that we have only six days now between today and the 31st of this

[Mr. President]

month and the whole of the Union Constitution has to be got through. I would therefore request the speakers to limit the duration of their speeches so that more members can participate in the discussion. I have half a dozen names with me of members who wish to speak. (*An Honourable Member*: "I move for closure"). There are also other members rising in their places. I will call upon members to speak in the order of their names in my list.

Shri K. Santhanam (Madras: General): Is it necessary, Sir, to send up names to you for an opportunity to speak? Could not the members catch your eye?

Mr. M. S. Aney (Deccan and Madras States Group): Is it not enough if the members rise in their places and thus catch the eye of the President if they want to speak?

Mr. President: It is not necessary that the names of members should reach me if they wish to speak. But if any member has sent his name and rises in his place, he will naturally catch my eye first. I shall not go according to the list as it is and would call on members who catch my eye. I would request members to limit the duration of their speeches to five minutes each.

The Honourable Mr. B. G. Kher (Bombay: General): Mr. President, I do not propose to take even five minutes. I rise because the matter is of such importance . . . . .

B. Pocker Sahib Bahadur (Madras: Muslim): On a point of order, Sir, I would like to know whether it is not necessary that all members who have given notice of amendments should speak first so that all the amendments may be discussed together?

Mr. President: So far as this Clause is concerned, all the amendments have been moved and the amendments and the Clause are for discussion.

B. Pocker Sahib Bahadur: I have given notice of an amendment to this amendment. I request you to allow me to speak at this stage. It may perhaps be taken as moved.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): It could not be taken as moved now. So many members have already offered their remarks. As he has not moved it up to now, nothing can be done now.

Mr. President: So many have spoken already and the Member did not move his amendment earlier. His amendment was received on the 21st July. On that very day all the other amendments were moved. If the Member had any intention of moving his amendment he could have called my attention to it then.

The Honourable Mr. B. G. Kher: Mr. President, Sir, I rise to oppose the amendment moved by the Honourable Pandit Hirday Nath Kunzru. As I said, Sir, I would not have intervened in this debate had I not felt that the amendment moved by the Honourable Mr. Kunzru

was of such a nature that it was the duty of everybody to oppose it. I submit that it has only to be read to show how futile it is. What it reads is this :

"Whenever the Governor is satisfied that there is a great menace to the peace and tranquillity of the Province or any part thereof, he may, in his discretion, report to the President of the Federation."

The Honourable Pandit Hirday Nath Kunzru: It is the same as the amendment proposed to be moved by Pandit Govind Ballabh Pant.

The Honourable Mr. B. G. Kher: Then two of you will have to be blamed, instead of one.

Now, I do not know if there is a clause like this in the Burmese Constitution if there is any such Constitution, but I shudder to think what would have happened if what has happened in Burma were to happen under this Constitution. Here is a person elected on adult franchise, getting more allegiance from the people than even the Prime Minister. All that he can do is to send a telegram to the President of the Union and await results. Then, Sir, it is a pity that the Honourable Member does not provide as part of his amendment what the Governor has to do if the telegraph or the telephone communication is cut off. Whenever an emergency takes place,—and I have seen, Sir, that even at a short distance of about 15 miles from Bombay it was not possible for people to get into communication with the Governor, or the Prime Minister or any other authorities for less than 20 hours,—what is the Governor supposed to do? He is to report to the President. Therefore even in these days of modern communication, if all that a Governor elected on adult franchise has to do is to send a report to the President of the Union and watch the results, I shudder to think what the consequences will be. I therefore oppose the amendment which, if accepted, will do the greatest harm.

Apart from that, experience has shown, as previous speakers have pointed out, that in a country where those who are in power are subject to party politics, it is necessary to have somebody who will be above intrigues, above party turmoils and who will be able to secure the safety of the people. What we are trying to do is to provide that the Governor should shoulder the responsibility and then should communicate the gravity of the situation to the President of the Union who is assisted by his Cabinet and that the President will either confirm the action of the Governor or differ from the action taken by him. If you have a Governor elected on adult franchise, do not make him only a figurehead, simply sending telegrams to the President of the Union. I oppose the amendment that has been moved by Pandit Kunzru.

B. Pocker Sahib Bahadur: On a point of order, Mr. President. I gave notice of an amendment to the amendment of Mr. Munshi. I was under the impression and rightly so that it is the duty of the President to call upon persons who had given notice of amendments to move those amendments. I did not think that it was necessary to stand up and ask for permission to move my amendment. I was not asked to move my amendment on the 21st. Only Mr. Munshi's amend-

[B. Pocker Sahib Bahadur]
ment was moved and further discussion was adjourned. I therefore request that I may be allowed to move my amendment.

The Honourable Sardar Vallabhbhai Patel: When the President has given a ruling on a point of order, can the same point be raised again?

Mr. President: When a ruling has been given by the President, the same point cannot be raised again. In this case, before we closed the discussion, I made it clear that all the amendments had been moved. At that time the Honourable Member did not draw my attention to the fact that his amendment had not been moved. I am afraid I cannot allow him to move it at this stage.

Dr. P. K. Sen (Bihar: General): Mr. President, Sir, I will conform to the wholesome time-limit which you have fixed, and I shall be as brief as I possibly can. The question before the House involves some fundamental principles. Frankly, my views are strongly in favour of the amendments tabled in the names of my Honourable friends Mr. Munshi and Mr. Gupte. Whatever may be my view, I am quite prepared to subordinate them because I know that the wisdom and sagacity of this House will choose the right course. Let there be no illusions. First of all, it is an emergency measure and an emergency does not happen everyday. An emergency is an emergency, it cannot be defined, it cannot be described in all its features. It appears to come in upon us suddenly but in fact it comes by insidious stages, and the amendment contemplates that the Governor should be a man of insight and foresight, firmness and promptitude who will understand and know at what stage he should step in and stop the rot. That I understand is the conception of the Governor that we had in mind when we decided upon electing him on adult franchise. What we wanted to secure was that he should be the people's man and should have the whole province behind him; every man and woman should we thought, come to the polling booth having in mind the sort of men he or she is voting for, the man who will have the power and initiative to do the right thing at the right moment. It is impossible to imagine that the Governor should wilfully try to override the ministry. It is accepted on all hands, since we have adopted the parliamentary form of Government, that the ultimate executive authority resides in the Council of Ministers headed by the Prime Minister. When the Prime Minister is working in perfect unison and harmony with the other Ministers, when there is no wheel clogging other wheels, when all the wheels lubricated by mutual understanding and goodwill run smoothly, it is then that this democratic form of Government fulfils its proper functions. But it is apprehended there may be a sudden emergency which may not be within the power of the Ministry to cope with. It may be that there are factions, disagreements, disunion among the parties. Every form of party government is subject to these disadvantages. In case there is such a position, in case we find that every wheel, instead of helping the other wheels to do their work, clogs the rest, preventing the State machinery from running smoothly and further when there is danger ahead to cope with, it is only then that, as the amendment contemplates, the Governor should be in a

position to take all powers in his own hands and having taken necessary action, immediately report to the President of the Union so that the President in his discretion may then do the needful. This is the whole extent of the emergency powers to be vested in the Governor. The question therefore arises "Can we be confident that this democratic form of government, this parliamentary form of government, will always run so perfect that there will be no occasion for any such emergency powers?" In case we are so confident, it follows that there will be no occasion for the Governor to exercise these powers. But again, I ask, can we be so confident? Have we had such a long experience of this form of government that we feel that it can never be necessary for anybody to go over the head of the Prime Minister or the Council of Ministers and to take the initiative in his own hands? The fact is, there is a dread of what is called 'one-man rule'—and it is this dread that accounts for the strong opposition to the amendment. Not even for 24 hours, it is said, can we tolerate 'one-man rule'. It is against the fundamental principles of democracy. But it seems to be forgotten that it is when the democratic machine breaks down, or is incapable of coping with the situation, that the amendment contemplates vesting the man whom we have elected by adult franchise of the whole province and who undoubtedly enjoys our confidence, with limited emergency powers. Without such powers the Governor of a province would be a mere figure-head. The Governor that is contemplated in the section where his election is provided for is a Governor who can handle an emergent situation, and it is for that reason, I take it, that the election on adult franchise was decided upon. I am quite prepared, as I have said, to subordinate my own view but I do hope that we shall be under no illusions to the effect that we are subjecting ourselves to one-man rule even for a short time. It is an emergency measure and it is only justifiable as an emergency measure and, on that ground, I do submit that this amendment should be accepted and passed.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Mr. President, I am really sorry that I have to speak on this Resolution, I had no intention of doing so, not because I have no opinions, but because I do not ordinarily like to challenge publicly the views, expressed by my esteemed colleagues. But, unfortunately for me, Pandit Kunzru blurted out that the amendment which he had moved had originally appeared in my name, which is a fact and which I cannot deny and Mr. Kher then said he had to couple my name with Kunzru's as the two fools who had joined together in giving notice of such a motion.

The Honourable Mr. B. G. Kher: I did not say so.

The Honourable Pandit Govind Ballabh Pant: You did not in so many words.

I am glad that he now realises that what he said was not what he meant and I am not sorry. But all the same while I am bound by the decision of the Party and have to support Mr. Munshi's amendment, I think I must give my reason why I had the temerity and the presumption to give notice of this amendment.

Mr. President: May I point out that the House is not concerned with any decision of any Party?

The Honourable Pandit Govind Ballabh Pant: I have no objection to that, but still I feel that Members should be guided by the collective wisdom of many than by their own individual intelligence. At least I am prepared to merge my own in that of the bigger group. But still I have to tender my explanation for my attitude and the reasons which weighed with me then. The point is this. If there is a grave menace to peace and tranquillity, then how is such a delicate situation to be handled and by whom? Now you have to take into account the scheme of the Constitution which we have already accepted. I fully realize that we have agreed that the Governor will be elected by adult suffrage but by adopting that method of election we do not convert him into a Sahasrabahu. He will still have not more than two hands and two eyes. The question is what will be the agency and under whom will the services be functioning. If it is considered that the Governor, being elected by adult suffrage, should have control over the executive in the day-to-day administration, I can understand his ability to handle a delicate situation, but to keep the Governor aloof from the entire sphere of administration and then to ask him to butt in in the most delicate moment when those in charge of the administration are supposed not to be quite equal to it, is to create chaos and to make confusion worse confounded. One can understand the Governor being in charge throughout and thus being in a position to handle a delicate situation. But to keep a man out of water—and when there are storms to ask him to keep the boat sailing is to court disaster. That can never work, that is my apprehension.

The Governor has no power ordinarily and even now the Governor is to be no more than a reporter except for two weeks. How is that poor man during these two weeks to acquire all that capacity, that intelligence and that knowledge, which he does not normally possess? The system of democratic government means government by the people through their elected representatives. Now what is really the position which you are contemplating? It is this; the Governor does not agree with his Ministers. He cannot persuade the Legislature to agree with him and to accept his point of view. It is always open to the Governor to go to the Legislature to address them and to tell them that a delicate situation had arisen, that the Ministry had unfortunately not been able to take the correct decision and that it was time for the Legislature to revise its attitude towards the administration and those in charge of it. If the Governor fails to convince the Legislature, and if he fails to convince the Cabinet which consists of not one or two, but I think of a number between 15 and 20, he will be still empowered to override the unanimous opinion of 400 members of the Lower House, the 60 members of the Upper House and the 20 representatives of the Legislature included in the Cabinet. When there is a grave and delicate situation and when there is no agency under him, how can that poor man shoulder such a burden? That is the issue that you have plainly to face; and I say if it were only this much

and no more, I would not have given notice of that amendment, but the thing is that it also tends to impair the integrity of the services, it introduces an element which upsets the psychological basis on which democracy stands, it asks people to look for protection to a man who has no power to protect them. It asks the services to be prepared for a contingency which will never arise and in which they will have to carry out the order of somebody other than the Ministers. It is fraught with grave danger. I may also disclose for the edification of Mr. Kher if he is not already aware of it, that it is not Mr. Kunzru or myself alone who happen to hold this opinion. This question was considered at very great length. I had an opportunity of placing my point of view before the joint meeting of the Provincial Constitution Committee and the Central Constitution Committee and it was accepted by both that the Governor should not be clothed with such authority as is now suggested in the amendment moved by Mr. Munshi. The matter was considered by the Provincial Constitution Committee and they also finally accepted the view that the Governor cannot possibly discharge such a heavy responsibility. While I am sorry for having lost company with Mr. Kher, I have found compensation in many others who were associated with me in these Committees. So, the loss, though regrettable, is not irreparable.

Mr. Kher enquired if wires are cut, if the Ministers are assassinated, what will happen? I say such a contingency will never happen. I will never allow my Ministers to be assassinated. So long as I am the Prime Minister, nobody will be allowed to assassinate the Ministers. If I cannot discharge that duty, I will step out. If the Prime Minister cannot defend himself and his Ministers, it is time for him to step out and make room for somebody else, for some other sturdier Prime Minister to come and take his place. He asked what will happen if wires are cut. I will see that no wires are cut.

He asked what will happen if all the Ministers are assassinated. I ask what will happen if the solitary Governor, who has to report, who has to save the wires, who has to keep the road free for the passers by, is killed? People forget that even if the Governor is killed, even if the Prime Minister is killed, there is the House there is the Legislature and it steps in and takes all the steps necessary in order to safeguard peace and tranquillity. The amendment that has been moved is neither, if I may say so, fish nor fowl nor good red herring. But it has still the odour of rotten fish. I am not free to utter these words. You have to swallow the rotten fish.

Now, Sir, you have to look at the scheme of the Act from which this Section 93 is being copied. Under this Act, the control of the services is essentially vested in the Governor. The Secretary of State's Services are under the control of the Governor. They look to him for protection and for promotion. As you may be aware, you cannot transfer a Secretary of State's Service man from one place to another under the 1935 Act without the approval and consent of the Governor, with the result that he is the man who is really in charge of the executive and he is the man who is responsible for having created the emergency. In

[Pandit Govind Ballabh Pant.]

spite of his being in complete control of the services, he allows the situation to develop in such a way. He must face the music for which he is mainly responsible. But while under this 1935 Act the Governor is not altogether free to adopt such an attitude himself, and he has to obtain the consent of the Governor-General, and the Governor-General in his turn is answerable to Parliament, here the Governor is responsible to nobody. There is no House which can call him to account for having committed a grievous blunder in a very delicate situation. I shudder to think of this amendment. In a very delicate situation when the Ministry should be free to handle things in the best manner possible the Governor may meddle and prevent the Ministers from handling the situation in a sound, proper and fair way. In a very delicate situation just when the Ministry should have a free hand, the Ministry will be fettered with the result that a crisis will develop even where a crisis could have been avoided. This is my apprehension.

I am afraid I have taken too much time. There is a lot to be said. With the little experience that I have got in this line, I can give you many illustrations. I still feel that the amendment of which I gave notice was not unsound.

The Honourable Mr. B. G. Kher: On a word of personal explanation, Sir, I only want to say that I did not mean to give any offence to Pandit Pant and I am not aware of having said anything to hurt his feelings. Mr. Pant has taken it very personally. . . . .

The Honourable Pandit Govind Ballabh Pant: No, no. Not at all.

The Honourable Mr. B. G. Kher: It was only in debate.

The Honourable Mr. Hussain Imam (Bihar: Muslim): Mr. President, after the illuminating speech of Pandit Pant, my task has been eased a great deal. I hold the same opinion that Pandit Pant holds and Pandit Kunzru has expressed. I feel that this amendment has been ill-conceived, that it is undemocratic and that it is not based on sound logic, and is actuated, perhaps by some ulterior motive. I am sorry to use this word; but I take my cue from the joking remark of an ex-Congress man, a colleague of mine in the Central Legislature who said that perhaps it might have been aimed at demobilising the leftist element if ever it should get control of the Provincial Ministry. As I said, this was a joking remark.

My whole opposition is based on two factors. In the first place, in every constitution which I have looked through, where the Ministry is responsible to the Legislature, there is no provision of this nature that the Governor can take over the governance in his own hands. He can dismiss the Ministry and call for another if he feels that the Ministry has lost the confidence of the House.

He can, if he finds that the House is not behaving properly, dissovle the House but this motion is the strange innovation which was created by the British Government in the peculiar circumstances of India to

have a Section 93 which is being perpetuated. The circumstances, as Pandit Pant has pointed out, were different. The Governor there was really a party. He had certain interests which were adverse to those of the Ministry and it was essential for him to be armed with certain powers. Ordinary laws are suspended more often than is realized. There are different methods of suspension, different degrees of suspension. For instance, you have Section 144 suspending the liberty of personal association. You have, if there is a grave financial crisis, a moratorium where the ordinary laws of limitation are stopped. If you have a grave menace to the peace of the country, there is Martial Law where for a certain time you establish military rule. So the degree of suspension differs in different cases for different occasions. Secondly, I fail to realize how this omnipotent person known as the Governor can, within the short space of 14 days, change over the whole face of the Province where the Ministers who had been working for years together were not able to do it. What is the special agency and authority which he will use which is not available to the Ministers? He can, even in the existence of a Ministry, pass an Ordinance. He can even in the presence of the Ministers with the concurrence of the Ministry, establish Martial Law. But without doing any such act, merely by assuming power to himself he will be publishing to the world that 'Now I have suspended the villains of the piece who were merely existing as a sort of stop-gap and instigators'. The meaning of this section is indicated by the following wording :

"It is not possible to carry out the Government of the Province with the advice of his Ministers."

So what it means in reality is that the danger to the peace and tranquillity is brought about at the instigation of the Ministers. Merely by the suspension you generate such an atomic power that peace and calm prevails. But after 14 days what will happen? Will the same bad lot who were regarded as responsible for all this danger to the peace, be brought back? In that case what will be their prestige and what will be their position? With what face can they ask their subordinates to carry out their orders when the subordinates know that their orders are to be carried only as long as the Governor is not invoking his special powers? There is no provision that this power of suspension will not be utilized times out of number. It is once suspended; after two weeks the Governor allows the constitution to prevail but the next day again he suspends the constitution and this process of limitation can be repeated *ad nauseam* without any restraint. In fact, the position of the constitution in the Province in which this power is utilized will become so bad that I feel that it is the Ministers who should be protected. I, as you know, am not a champion of any executive authority. This may in the end turn out to be the establishment of an autocratic rule if it is sanctioned by the President of the Union. If the President of the Union feels that in a Province a Ministry has come into power which is not acceptable to the Union Executives, then that Ministry will not function and cannot function. I looked into the Union Constitution to find a counterpart for the use of this power by the President. I regret to say that in the Union Constitution too no provision has so far been made.

[Mr. Hussain Imam]

Probably when the motion is moved, a like amendment will be placed therein giving the President autocratic power to carry out the Section 93 Government which had been rightly hated throughout India by all sections of the people. I for one, do not hold a brief either for the Governor or for the Ministry. I have had, during this short period that the Constitution has been in working order, many occasions to differ with the Ministers. I have had occasion to differ with the method in which the Section 93 Government was carried on. But I feel with all its defects, the ministerial method is a democratic method and Section 93 helps autocracy and it may at some date lead to the establishment of a regime in the province which may not be acceptable to the people. Sir, I therefore oppose the motion of Mr. Munshi.

Prof. N. G. Ranga (Madras: General): Mr. President, Sir, I am very vehemently opposed to the point of view placed before this House by the two previous speakers. It is exceedingly difficult to understand how one of my own leaders who has had experience of running the Ministries should have so completely ignored the very recent experience of Burma. Let us bring back to our mind what has happened there. Supposing any such mishap happens here in India, and half a dozen Ministers including the Prime Minister are done away with, who is there to be in that Province to straightaway make a report to the Federal President and invoke his aid? Not anyone of the Federal Union Ministers; and the Central or Federal President cannot very well immediately charter a special plane and run down to Madras or even Lucknow and then help these people who are helpless by invoking the aid of the Federal and Provincial troops. It is extraordinary that experienced people should come here and seriously place before us views in defiance of the actual experience that is going on in our own places.

Think again, Sir, of the possibility, not of the kind of Congress party we have to-day, having overwhelming majorities in the various Provincial Legislatures but the possibility of a number of competing political parties coming into the Legislatures and Coalition Ministries only becoming possible as a result of a sort of grouping of a number of groups and parties and the Prime Minister being only a little more than a sort of a figure head; then are we to understand at that stage a man of the stature of Pandit Pant will then suddenly come to incarnate as Prime Minister and go to the Governor and say 'I do not want your interference. I will be able to look after myself.'? Even a man of the stature of Pandit Pant, Sir, will not be able; under those circumstances being the Head of a Coalition Government, to look after himself. There will be occasions, when the Prime Minister himself or at least some of the Ministers will surely go to the Governor and request him to invoke his special power in order to save them in spite of their own Ministry, and to save them from some hooligans or *goondas* or organized bandits in the country.

Some such reserve power has got to be placed in the hands of the Governor; but who is this Governor? Another friend comes and tells us 'Do not make him an autocrat'. What does he mean by autocracy?

Does he mean that a Governor who has been selected by adult franchise is to be considered as an autocrat? Well, he may also become an autocrat. So many people who had been elected by adult franchise also became autocrats. Quite true. That is why we have already provided the power for the Legislatures to impeach a Governor if he were to exceed his powers. If he were to misbehave himself, as long as you have got a reserve power there in the possession of the Legislature itself, why on earth should we be afraid of the Governor either becoming an autocrat or treating his Ministers as if they were his chaprasis?

Then, there is the other point raised by Mr. Pant. He asked "what sort of experience can this Governor possibly have? Here are his Ministers dealing with day-to-day administration, who have been accustomed to take decisions on responsible occasions, whereas this man sitting as a sort of body knows nothing. When a grave crisis comes we are asked to invoke his aid. How would it be possible for him to come to a right decision?" May I remind him that it is his duty, strong as he is as Premier in his Province, and the duty of his other Ministers to keep the Governor in daily touch with the administration? It will be the duty of the Governor to become experienced and he would be a fool indeed if he does not grow experienced by the advice that is being given by his Ministers and Prime Ministers like Pandit Govind Ballabh Pant. Therefore, Sir, the Governor will be an experienced person. He has got to be an experienced person, a trustworthy person and a man with a sense of responsibility if he were to be able to commend himself to this adult suffrage and get himself elected in the first instance. Secondly, after his election he is being advised not only by the Prime Minister but also by his Ministers. He has got a right to be present at their Cabinet meetings; he has got also to be advised by all of them collectively and in the light of all this experience that he gains it would be possible for him to judge at the right moment whether an emergency has actually arisen at all, and if it does arise, he must possess the necessary emergency powers.

Another question has been put to us. "What powers has this Governor got? Whom has he got under him to order about?" Just now, my friend Mr. Hussain Imam told us that if you were to clothe him with all these powers, the Civil Services would only look to him and not to the Ministers for allegiance. Exactly so. The Civil Services will learn to look both to the Ministry as well as the Governor. Always the Governor represents the whole Ministry. So the Civil Services as well as the Reserve Forces and Police Forces will learn to obey the Governor also. The Ministers may be powerless or irresponsible for the time being. Then, what would happen to these Ministers, our friend has asked, if in a crisis they found themselves completely unequal to meet it and, therefore, they allow the Governor to have these emergency powers?

Very well then, after the emergency is over, if the Ministers are found to be absolutely useless by the majority of the members of their own Legislature, they will have to make place for another ministry.

[Prof. N. G. Ranga]

If, however, the Legislature has confidence in them and they are able to carry on, let them carry on the administration. If, on the other hand, the Legislature as well as the Ministers come to the conclusion that the Governor has misused his powers and created an emergency, then it would be within their right to move for the impeachment of this Governor. When you have provided for all these safeguards, I cannot understand how my leader Pandit Govind Ballabh Pant comes here and places before us these untenable arguments against this very wholesome amendment.

Sir, one more point and I have done. Let us remember that this Governor is to be elected by adult suffrage. Let us remember that this man is to be there continuously for five years whereas his Ministry may last for three months, or four months or six months. Let us not forget the recent experience in Madras. We must clothe this permanently placed man with as much power as we possibly can so that there may be some stability, some continuity, some security for the masses of the people for the safeguarding of their civil liberties.

Lastly, Sir,—and this is my conclusion,—I am speaking here as one of the Leftists in this country. I have been a Leftist ever since I started my political career. I am afraid I have not the Ministerial experience of my friend Pandit Govind Ballabh Pant and may be it is because of that that I am still able to speak in the name of all the Leftists. All the Leftists will consider this thing to be one of the safeguards against any kind of hooliganism, or organised banditry as recently occurred in Burma, which we want to prevent in our own country.

Mr. Shankar Dattatraya Deo (Bombay : General) : I move closure, Sir.

Mr. President: Closure has been moved. The question is :

That the question be now put.

The motion was adopted.

Mr. President: The Mover may reply

Mr. M. S. Aney: Mr. Munshi never spoke on his own amendment.

Mr. K. M. Munshi (Bombay : General) : May I speak?

The Honourable Mr. Jaipal Singh (Bihar : General) : On a point of order, Sir. Mr. Munshi when he moved his amendment the other day told us that he would reserve his observations for today, as also did Mr. Gupte. I think we must give him an opportunity to speak.

An Honourable Member: If he has not spoken, it is not our fault.

Seth Govinddas (C. P. & Berar : General) : On a point of order, Sir, The House has accepted closure and now only the Mover can speak If Mr. Munshi did not want to make any remarks, why should we ask him to do so?

Mr. K. M. Munshi: I am not very keen to speak.

Mr. President: I think Seth Govinddas has raised a correct point of order. The Mover of the Resolution will now speak.

The Honourable Sardar Vallabhbhai Patel: Sir, in effect, there are two amendments to the Motion that has been moved by me. One is by Pandit Hirdaynath Kunzru and the other by Mr. Gupte, who accepts the amendment of Mr. Munshi. In fact, Mr. Munshi's amendment is an improvement of language on Mr. Gupte's amendment. In substance both are the same. Now, as I have already mentioned in my introductory remarks when I moved this Motion, this is a very controversial matter. There are two points of view. There is no doubt that an encroachment of this kind on the powers of the Ministry is bound to be resented and is bound to create difficulties also, and in a democratic constitution it does not fit in properly. Therefore, I can fully appreciate the objection, and the force with which the objection has been put, by our distinguished Prime Minister, Pandit Govind Ballabh Pant.

On the other side, there are other Prime Ministers and others who have experience of working the constitution. They equally feel that in the present conditions of the country it is a dangerous thing not to provide for emergency of such a nature as is mentioned or as is contemplated in the amendment of Mr. Gupte, namely, when there is a complete breakdown of the machinery of law and order and if any such event as the recent unfortunate incident in Burma takes place or a similar tragedy of such a nature arises, or, as we have seen, incidents like the recent unfortunate ones in our own country in some provinces take place, if such a situation arises, it would not be enough for a machinery in the province to report to the Centre but there should be something more effective. We should have something else so that the law and order machine could function without waiting for a moment. Otherwise, there are dangerous consequences likely to follow.

These are the two points of view, and as Pandit Pant has said, there is much to be said on his behalf, and equally, there is much to be said on the other side also. Common mortals have to follow the path of collective wisdom and take the opinion of people who have experience. The weight of opinion as it appears from the debate here is that we must have some sort of provision as is contemplated in the amendment.

I do not propose to take up the time of the House any more, because there has been considerable debate and the *pros* and *cons* have been discussed thoroughly. Both those who argue in favour of and those who argue against have only one thing in their minds—what should be in the new constitution for the good of the country—that is the only point of view that they have in mind. We have all to learn by experience. We have never maintained that we cannot improve or modify this constitution, if by experience we find that there are difficulties in its working. As I have already said, it is the spirit in which the constitution is worked that matters. There is no reason to suppose that our President, or the Governors elected by universal adult franchise

[Sardar Vallabhbhai Patel.]

will be engaged in conflicts with the Ministry. But even if any such unfortunate event take place, we have the power to open the matter again. We are free to do so. We do not have to go to the British Parliament or look to any outside authority to improve the Constitution. I, therefore, propose to accept the amendment of Mr. Gupte, as amended by the amendment of Mr. Munshi.

Mr. President: I will put Pandit Kunzru's amendment first:

"That for Clause 15, the following be substituted:

'Whenever the Governor is satisfied that there is a grave menace to the peace and tranquillity of the Province or any part thereof, he may, in his discretion, report to the President of the Federation.'"

The amendment was negatived.

Mr. President: Then I shall put Mr. Munshi's amendment, which is the amendment of Mr. Gupte, since Mr. Gupte has accepted Mr. Munshi's amendment.

That for amendment No. 8 in Supplementary List of Amendments, dated 16th July 1947, by Shri B. M. Gupte, the following be substituted:

"(1) Where the Governor of a Province is satisfied in his discretion that a grave situation has arisen which threatens the peace and tranquillity of the Province and that it is not possible to carry on the Government of the Province with the advice of his Ministers in accordance with the provisions of Section 9 he may, by Proclamation, assume to himself all or any of the functions of Government and all or any of the powers vested in or exercisable by any Provincial body or authority: and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.

(2) The Proclamation shall be forthwith communicated by the Governor to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.

(3) The Proclamation shall cease to operate at the expiration of two weeks, unless revoked earlier by the Governor himself or by the President of the Union."

The amendment was adopted.

Mr. President: The Resolution, as amended, becomes the substantive proposition and I put it to vote.

Clause 15, as amended, was adopted.

REPORT ON THE UNION CONSTITUTION

Mr. President: We shall now take up the discussion of the Union Constitution Report. The first Clause of Part IV was moved by Pandit Jawaharlal Nehru. We are now to take up the amendments to that clause. I have got a very large number of amendments of which notice has been given.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States Group) : *[Mr. President Thursday was the last day for submitting amendments to the rules framed by the Union Powers Committee. But now that you have fixed the order of bussiness, you could kindly extend the time for submitting amendments to the Report of the Union Powers Committee]*

Mr. President: *[I informed the House yesterday that the time had already expired.]*

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, in Part III of the Memorandum on the Union Constitution, it is stated.

> "Here enumerate the Fundamental rights and principles of State policy as passed by the Constituent Assembly."

But, Sir, some of us have given notice of amendments to these Fundamental Rights and Principles of State Policy. I have in particular an amendment to add a fresh clause to the Fundamental Rights and Principles of State Policy, saying that "Slaughter of Cows shall be forbidden in Bharatvarsha by law". I would like to know when I shall have the opportunity to move that amendment.

The Honourable Sir N. Gopalaswami Ayyangar (Madras : General) : The clauses relating to the Fundamental Rights were discussed in this Assembly and so far as putting them into the draft text of the Constitution is concerned, these clauses were passed at a previous session. The Member who has just spoken has asked when he and others who have given notice of amendments to the clauses relating to Fundamental Rights will have the opportunity of moving such amendments so that the House might consider them. I think the proper time for moving all such amendments is when the draft text of the Constitution incorporating the Fundamental Rights is taken up for consideration at the final session of this Assembly. I think Pandit Jawaharlal Nehru made the position perfectly clear. He said that when that draft text was brought before the House, members would be free to move amendments not only to the wording of the draft, but also to the substance of the draft.

Mr. President: I think that makes the position perfectly clear. It was made clear by Pandit Jawaharlal Nehru also. The amendments to the Draft Constitution, dealing with the Fundamental Rights can be moved at the final session.

An Honourable Member: We have not approved of all the clauses in Fundamental Rights.

Mr. President: We shall deal with them when they come up. Amendment No. 61 on the Order Paper—Shri Vijayavargiya.

Shri Gopi Krishna Vijayavargiya (Gwalior State) :

*[Mr. President, I do not want to press my amendment because of the views expressed here, after I had moved my amendment. But there are many things to which I consider it necessary to draw your

[ ] English translation of Hindustani speech.

[Shri G. K. Vijayavargiya]

attention. This Section deals with the method of election of the Head of the Federation, According to the amendment, all the units of the States will participate in the election of the President. But the States Legislatures are very faked-up and crude. They will affect the result of the election. Therefore, I moved an amendment that the Union President should be elected directly on the basis of adult franchise, so that the people—even the poor ones—may have the opportunity of exercising their votes for the election of the President. Now I do not want to press my amendment in view of the opinions expressed here. I would say only this much that there will be no uniformity among those who will elect the President, because on the one hand the elected members of the provincial legislatures will take part in the Presidential election and on the other hand, the members of the States Legislatures which are irregularly constituted. This will be grotsque. The States have only parodies of legislatures. They have nominated members, landed aristocracy and others representing special interests. So long as there is no democracy in the states, there is great danger for our Federation. The States representatives will take part in the election of the President. There may be many other dangers too. Having all these in view, I deem it desirable that the States representatives should be properly elected and necessary safeguards should be incorporated whereby the nominated members, *jagirdars* and others belonging to special interests in the States legislatures, may not be allowed to vote for the election of the President.

Federation is going to be established in our country but as yet, we do not know if all the States will join the Indian Union and what attitude they will adopt towards it. We do not know as to how the participating States will affect the Union. I represent the States people and I think it necessary to incorporate some measures as safeguards against possible dangers. The danger is real. The elected members of the States Legislatures will seriously affect the result of the election of the Union President. Many States ministers are bringing various amendments seeking to secure more favours for the Princes in the draft constitution. This is not in the interest of the people. I desire that the Union President should be directly elected on the basis of adult franchise. This would satisfy the people of the States. Even the poor ones will have the right to vote for the election of the President. However, this method is not going to be adopted and for various reasons I do not want to press my amendment. But I wish to point out that in view of the conditions prevailing in the States, we must be cautious about the intended amendment from the States ministers. I do not move my amendment.]*

(Messrs. A. K. Ghosh and S. Nijalingappa did not move their amendments, Nos. 62 and 63.)

Mr. H. V. Kamath (C. P. and Berar : General) : I am told that the Hindi equivalent of 'President' will be decided upon when the Hindi draft of the Constitution comes up for discussion. Therefore I do not wish to press this amendment (No. 64) at this stage.

(Shri Balkrishna Sharma did not move his amendment—No. 65.)

[ ] English translation of Hindustani speech.

Shri Gokulbhai D. Bhatt: *[Mr. President, the amendment I wanted to move was in connection with the word, 'Rashtrapati' or the President. He should be named as 'Rashtrapati' or 'Neta' or 'Karndhar'. But I am told that this will be decided after the report of the Committee set up for this purpose has been submitted. Therefore, I do not move my amendment.]*

(Messrs. M. Ananthasayanam Ayyangar, Mohanlal Saksena, B. M. Gupte, and Jadubans Sahai did not move their amendments—Nos. 67, 68, 69, and 70.)

Sri K. Santhanam (Madras: General): It was suggested by Pandit Nehru that we might begin with Part IV.

Mr. President: Yes, we have taken up Part IV and we are on Clause 1.

Sri S. Nagappa (Madras: General): We are awaiting the Minorities Report and I do not therefore intend to move this amendment No. 71 at this stage.

Mr. T. Channiah (Mysore State): Mr. President, Sir, I move the following amendment, namely:

> "That in sub-clause (1) of Clause 1 after the word 'elected' the words 'by rotation either by the North of India or South of India' be inserted."

Sir, why I have suggested this system of election to the Presidentship of the Federation is due to the following reasons: The election of a President to the Federation by rotation either by the North of India or by the South of India gives a fair representation and satisfaction to the people of India who stand geographically divided into two distinct divisions, namely, the South or the North of India. The people in these parts of India have got a distinct culture and methods of thinking and languages of their own, acclimatised to the conditions of those parts. More than anything else, Sir, there is in existence the lack of realization of the universal brotherhood and due to various reasons each man or woman has got a love of his or her own clan and does not realise to the extent possible the interests and rights of other people who are equally entitled to such rights or privileges. Such people are struggling hard to put forth their claims that their man should be elected as the President of the Federation, totally unmindful of the realisation of the universal brotherhood.

Secondly, Sir, the next feeling that comes and predominates in most of the people is this, namely, our man, our home, our state or our province, or does the President belong to North of India or does he belong to South of India and so on. So, Sir, we see how the people are forced to think under various circumstances and that broadmindedness limits itself to think in a selfish way.

Mr. H. V. Kamath: On a point of order, Sir. Can an Honourable Member read from a manuscript speech?

[ ] English translation of Hindustani speech.

Mr. T. Channiah: Again, Sir, let us take for instance, the existence or predominance of any one majority party in India. Such an organisation tries to put a man of its own as the President of the Federation and never allowing any other smaller organisation to take its chance. Granting that any smaller organisation takes its chance, there will be a sort of feeling in the minds of the bigger organisation that it should try to overcome the difficulty at the earliest opportunity.

There is again, Sir, the problem of the existence of innumerable castes in India. One community struggles to get over the other and at every stage each community tries to get power and recognition in the administration of every Government. That is but natural.

Apart from these, Sir, there will be great discontent among the minorities like the depressed classes and Muslims, when their claims are overlooked and when their very existence is not felt sufficiently either in the administration of the country or when their claim for Presidentship is not contemplated at all.

Just as we have got the love of the clan in India, so also we have been observing by experience, the North Indian employee in North India will look down upon a person coming from South India and *vice versa*. So, Sir, under these circumstances we see that each one of us is struggling for some power or other in the administration of the country. When once the power is attained by some people, the interest and care on the part of the person so chosen to that high power naturally neglect the interests of the other people and in the ultimate scramble for power, we the common men would have really lost the very democratic principles for which every common man is aiming to enjoy.

So, in order to create harmony of feeling among the people of India and for the proper justification of the President to be elected for the Federation, it is quite necessary to adopt the system of the election of the President to the Federation by rotation either from the North of India or South of India.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

"That in sub-clause (1) of Clause 1, for the words 'as provided below' the words 'in the manner set out below' be substituted."

I may explain that this is only a drafting amendment. It is merely a re-statement of the text in different words. With these few words I beg to move my amendment.

(Amendments Nos. 74 to 84 were not moved.)

Rai Bahadur Syamanandan Sahaya (Bihar: General): I beg to move:

"That in paragraph (b) of sub-clause (2) of Clause 1, the words 'or where a Legislature is bicameral, the members of the Lower House thereof' be deleted."

Sir, Clause 1 lays down the procedure for the election of the President. It says that the election shall be by an electoral college consisting of (a) the members of both Houses of the Parliament of the Federation, and (b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof. It will be seen, Sir, that in the election of the President, the members of the Upper House are being excluded from taking part. I

would submit in this connection that, as this House has decided that the Provinces have the option of having a second Chamber, it does not look graceful that we should exclude the members of such Upper Houses, who will be there by election, from taking part in the election of the President. In fact, if members of the second Chambers are considered unsuitable for taking part even in the election of the President of the Indian Federation, why have second Chambers at all? In your wisdom, in the wisdom of the House, it has been decided that second Chambers will find a place in the Constitution of the Provinces subject, of course, to the expressed desire of the Province concerned. That being so, I think it is only fair that the members of the Upper House or the second Chamber, as you may be pleased, should be allowed to vote in the Presidential election. That such second Chambers are needed has been accepted in the Union Constitution, because at the Centre you have provided for a second Chamber. Second Chambers have now been existing in different Provinces and functioning for some time and I do not think I shall be contradicted by anybody if I state that if anything, they the second Chambers, have served a useful purpose by pointing out to the Lower House errors and omissions in the legislation coming up before them from the Lower House. In most cases I believe the suggestions of the Upper House have been accepted by the Lower House. I can say this from the experience I have of my own province of Bihar. There appears to be a fear, I suppose, in the minds of those who desire to debar the members of the Upper House from taking part in the election of the President. That fear emanates from the fact that the representatives in the second chambers generally belong to the propertied classes. In the first instance, I do not see why this House should decide that propertied classes should be debarred from taking part in the election of the President. For the election of the Governors in the Provinces, we have already decided that it should be by adult franchise, and that every person whether he is a propertied person or otherwise, will be entitled to take part in the election. Why then the distinction in the Presidential election?

We have not yet laid down the franchise for election to the second Chamber. It is open to this House to lay down such a franchise that the upper Chamber will not merely be representative of the propertied classes of this country. We may lay down the franchise in such a way that men of experience in different walks of life in this country, in industry, business, administration, public life etc.,—may hold a good proportion of the membership of the second Chamber. I am sure it will be conceded that the opinion of such representatives who will be men of experience should be taken in such an important matter as the Presidential election and nothing should be done by which we deprive ourselves of the views that those representives in the second Chamber may have. There is another aspect to the question also. From all the amendments which members have tabled to the provision for election of the President, it will be clear to you, Sir, that there is a large section of this House which desired that the election of the President should be by adult franchise. Now, if that is not possible Sir, I say that as many people as possible should be enabled

[R. B. Syamanandan Sahaya]

to express their opinion in the matter of the election of the President. We were not able to accept adult franchise on account of practical difficulties perhaps, but we should not further narrow down the circle and debar elected representatives of a section of the Provincial Legislature, constituted under the constitution framed by us from taking part in the election of the President. Considering how many important works we have to undertake and the rather difficult position in which this country may be placed in the future, I think it would be unwise to debar men of experience from taking part in important business of the country, especially in the matter of the election of the President where in principle it will be agreed that it should be the right of every citizen to take part. I would suggest to the Honourable the Mover that this limitation on the members of the Upper House should be removed and that they should be permitted to take part in the election of the President.

There is another matter also which requires consideration by this House. In the note appended to sub-clause (2), it is laid down that :

"The provision about weighting of the votes according to the population of the Units is necessary to prevent the swamping of the votes of a large Unit by those of a much smaller Unit which may happen to have a relatively large Legislature. The mode of weighting may be illustrated thus. In a Legislature where each Legislature represents 1 lakh (100,000) of the population, his vote shall count as equivalent to 100, that is 1 for each 1000 of the population; and where the Legislature is such that the Legislator represents 10,000 of the population, his vote shall count as equivalent to 10 on the same scale."

Suppose in a province under this arrangements the members of the Lower House of the Legislature of that province have 1/10th of the vote of the members of the Legislature of another province, if the members of the Upper Chamber of the former province do not vote, then to the extent that the Upper Chamber represents the people that province suffers. By debarring the members of the Upper House from taking part in the election of the President, we will be debarring some provinces from exercising their full voice based on the total population of the province.

Sir, I have nothing more to say. I hope this suggestion of mine will appeal to the Honourable the Mover.

Mr. K. Chengalaraya Reddy (Mysore State) : Mr. President, Sir, I beg to move the following amendment that in sub-clause (2) (b) of Clause 1, for the words "the members" wherever they occur, the words "the elected members" be substituted. The amended clause will read as follows :

"The elected members of the Legislatures of all the Units or, where a Legislature is bicameral, the elected members of the Lower House thereof" .

Sir, it will be seen that the President of the Union is not going to be elected on the basis of adult franchise directly but by an electoral college. There has been a fairly decent amount of opinion in favour of the President of the Union being elected on adult franchise, but since the whole constitution is based on the Ministerial type of Government rather than the Presidential type, it is as well that we should elect our President by an electoral college. Now, Sir, the electoral college

that is contemplated in this sub-clause is divided into two sections; clause (a) covers the members of both Houses of Parliament of the Federation. Regarding that, there can possibly be no objection. Then comes clause (b) which covers the members of the Legislatures of all the Units. I have no difficulty in accepting it so far as the Provincial Legislatures are concerned because in the Provincial Legislatures in the Lower House all the representatives are elected on the basis of adult franchise. My difficulty is with regard to the States Legislatures. So far as the States Legislatures are concerned, it will be readily conceded that the Constitution of the States Legislatures will not be on a uniform basis. The various States Units will have different kinds of Constitutions according to the various stages of evolution that they may have arrived at. Since I contemplate that some of the States Legislatures may have nominated representatives, I want to restrict the voting power to the elected members only. It may be argued that by moving this amendment, we are assuming and agreeing by implication to the existence of nominated members in the States Legislatures.

I do not think, Sir, that would be the result, because I for my part will say that this amendment, if it is accepted, would be an incentive to the Unit Legislatures of the particular States concerned to do away with nomination and to provide for election right through in the Constitution. If some minorities which are being now nominated to the State Legislatures are not given the right to participate in the election of the President of the Federation, it is very likely that such minorities or any other interests may ask for election instead of nomination, so that their representatives may have the valuable right of participating in the election of the President of the Federation. So, Sir, viewed from any point of view, I trust this amendment would be acceptable to the House. It is looked forward to by some that before the Constitution is actually completed the State Unit Constitutions may be so drawn up as not to provide for any nominated members in their Legislatures. If that happens, I will welcome it. In that case it would be time enough when drafting the Constitution to omit this particular differentiation which has been contemplated by my amendment. For the present, Sir, I move this amendment and hope that it will be accepted by the House.

Shri Gokulbhai D. Bhatt: *[Mr. President, mine is an amendment to the amendment of Mr. K. C. Reddy. His amendment reads :—

"The elected members of the legislatures. . . . ".

I want that the word 'territorially' should be put before the word, 'elected' members' and it should read :—

"The territorially elected members. . .of the legislature. . . . ."

The reason for my amendment is this. There are special constituencies from which the members are elected. The elected members from special constituencies cannot be considered as real representatives of the people. But I thought that this might be further restricted.

I want to draw your particular attention to this point that the elected members must be genuine representatives of the constituencies,

*[English translation of Hindustani speech begins.

[Shri Gokulbhai D. Bhatt.]

which they represent. I do not want to press this amendment any further. I want to draw your attention to the fact that as most of the elected members representing the special Constituencies are *Jagirdars* and *Zamindars*, they should not be considered as genuine representatives of the people.]*

(Messrs. Biswanath Das, R. R. Diwakar, Yudhishthir Misbra and Jai Narayan Vyas did not move their amendments)

Prof. Shibbanlal Saxena (United Provinces: General): *[Sir, My amendment is that for sub-clauses (2) and (3) of Clause 1, the following may be substituted:

"The Rashtrapati shall be elected directly by the people on the basis of adult suffrage."

This is a very serious matter and I deeply feel that the scheme that we have accepted in the provincial constitution in regard to the election of Governors, should be adopted in the Union Constitution as well. In the provincial constitution we have decided to elect the Governor on the basis of adult suffrage. Shortly before we heard the forceful speeches of Pandit Pant and Mr. Kher, and in the end Sardar Patel accepted Mr. Munshi's amendment which lays down that a Governor elected on the basis of adult suffrage will have some special powers which he will use in times of crisis. It is clear from this, that Mr. Patel and this Constituent Assembly recognise what moral strength the Governors, elected on the basis of adult suffrage, will have and what will be its advantage. In the same way, I think, the 'Rashtrapati' should also be elected for adult suffrage.

It is certain that a person elected by twelve to thirteen crores of voters of the country, will have incomparable moral strength and dignity. He will be a man of the people and their true representative. Besides, in my opinion, for fulfilling our pledge for re-establishing unity in our country, which is broken up today and may be further broken up in view of the present efforts of some States, the election of the 'Rashtrapati' by adult suffrage will be very helpful. Then, even the poorest person in every part of the country from Travancore to Kashmir and from Calcutta to Bombay, will feel that he has the right of electing the President. He will then fully realise the dignity of an Indian and thus the roots of Indian unity will get stronger and stronger and the feeling of seceding from India, which is at present noticed in Hyderabad, Kashmir and Travancore will no more exist in the country. Even the people of those parts, which have seceded from India, will have a strong desire of reuniting with India. Therefore in the present circumstances particularly, I think that the election of the 'Rashtrapati' on the basis of adult franchise is very necessary and will prove to be very useful.

This is also the "national genius" of our country. We are hero-worshippers. By having an austere man and a genius as 'Rashtrapati' our country will make speedy progress. A 'Rashtrapati' elected by twelve to thirteen crores of voters will be a genius and will command moral support. With a population of 35 crores, we will be the greatest independent nation in the world. A 'Rashtrapati' elected by

]* English translation of Hindustani Speech ends.
*[English translation of Hindustani speech begins

twelve or thirteen crores of voters will enjoy unique moral prestige in the world. His individuality and moral strength will be very helpful to the country in the field of international politics. It will also appease the sentiment of hero-worship of the people of our country.

Today Mahatma Gandhi is the father of our nation even though he has not been elected to be so. All of us call him 'Bapu'. He is like a permanent president of our nation. An elected Rashtrapati will reach his position to some extent only if he is elected by twelve or thirteen crores of voters as their 'Rashtrapati'. He will thereby gain great moral prestige and honour and even though he may be aloof from every day work, he will benefit the country a good deal.

The draft constitution before us is an admixture of two constitutions. One of them is the American Constitution under which the President is dircetly elected on the basis of adult franchise. The other is the British constitution under which the Prime Minister is the leader of the majority party in the parliament. But in England too, there is a King who has great dignity and the people respect him more than any Prime Minister. Under the constitution he is not free to take any action independently but he plays a useful part in improving the administration. The 'Rashtrapati' in our constitution will fulfil the purpose served by the British King. I know that many of our leaders are not in its favour and they will oppose it. They say that when we have accepted a parliamentary form of government, we would like to have a constitution in which the leaders elected by the Assembly and the legislature will represent the whole nation and will have the responsibility of its administration and therefore to talk of the election of the 'Rashtrapati' on the basis of adult suffrage will be a sheer waste of time and will create unnecessary confusion. I do not agree with this. In my opinion, the party which will triumph in the presidential election in the country, will be in a majority in the legislature and will possibly command a majority in the federal legislature also.

For example, we elect Babu Rajendra Prasad, the President of the Constituent Assembly, as our president and Sardar Patel or Pandit Jawaharlal as premier. These two leaders will help and co-operate with each other. They will not be at loggerheads against each other. Pandit Pant while just now supporting another motion asked as to what will happen if the President dies. I say that if the President is not there, we will have the Prime Minister. His ministry can function and immediately conduct a second presidential election. In such an eventuality as we find in Burma, where the Prime Minister and his ministers have been murdered, the 'Rashtrapati' can manage the administration of the country and form another ministry. I say that the election of the 'Rashtrapati' will enhance the prestige of the country. Even though we do not give him powers, he will have his special influence on the administration by virtue of his position. Mahatma Gandhi is not even a four anna member of the Congress but everyone knows that every action in the country is taken on his advice. He is the architect of the present free India. I hold that the presidential election will be beneficial to us in every way but as I am not free in the matter, I do not press this amendment.]*

]* English translation of Hindustani Speech ends.

Mr. D. H. Chandrasekharaiya (Mysore State): Mr. President, Sir, the amendment that stands in my name runs as follows:

"That the following new sub-clause be added after sub-clause (3) of Clause 1 (3A):—

'The Presidents shall be alternately elected from the State and the non-State Units'."

You know, Sir, that the President of the Federation is proposed to be elected through an electoral college consisting of the members of the two Houses of the Federation, and the members of the Legislatures of the Units of the Federation. From this it is evident that the members from the States will not be in a position to successfully contest the elections by putting forward a candidate of their own for the Presidentship at any time because the members from the non-State Units will form an overwhelming majority of the electorates.

The population of the States is nearly 91 millions. That is to say, it forms nearly one-third of the population of the provinces forming the Indian Union and nearly more than four times the population of the Pakistan Units. The States representatives to the two Houses of the Federal Parliament, though forming a minority yet constitute an important part. So far as the Council of States is concerned, 71 members are contributed by the States alone, out of a total of 287 members of that body. Similarly, the House of the Peoples which is formed on the population basis, will contain an appreciable number from the State Units. In these circumstances, it would be just and proper that the State Units should be given a chance to put up their own candidate for the Presidentship exclusively for every second term. If that is considered to be a somewhat extravagant demand, it may be provided that at least for every third term, the States may put forward their own candidate for Presidentship.

You know, Sir, the States form an important element in the life of the country. After the 15th August, the States too will attain a status of independence just as other elements are going to do. But I for one would wish that the States, whether big or small, will not remain aloof and isolated. They must join hands with the Indian Dominion now and with the Indian Federation or Indian Union after the Constitution is framed. For this purpose a certain amount of good will and accommodation towards the States is very necessary. I believe that a provision of the kind proposed in this amendment will go some way towards establishing that happy relationship between the States and the non-State elements of our country. With these words, I commend this amendment for the kind consideration and acceptance of this House.

Mr. President: There is another amendment in your name.

Mr. D. H. Chandrasekharaiya: The next amendment which I am proposing reads as follows:

"That the following new sub-clause be inserted after sub-clause (4) of Clause 1:

'(5) Provision should be made for the President to take the oath of office as in the Constitution of U. S. A'."

One of the most important responsibilities cast on the President of the Federation is that he should preserve the Constitution and protect it from being violated. For any violation of the Constitution, he is

removable from his office through impeachment. On account of th it would be necessary and proper that the President should give undertaking in terms of an oath to that effect. Almost all Constit tions, especially Federal Constitution provide that an oath should taken by the head of the Executive. For instance, in the United States of America, the President of the Federation takes an oath of allegiance before he enters on his duties, in the following words :

"I do solemnly swear and affirm that I will faithfully execute the office of the President of the United States and will to the best of my ability preserve, protect and defend the Constitution of the United States."

The Irish Constitution has a similar provision in its Constitution and it is to this effect :

"The President shall enter upon his Office by subscribing publicly in the presence of members of both Houses of the National Parliament and Judges of the Supreme Court and the High Court and other public personages the following Declaration :—

'In the presence of Almighty God I do solemnly and sincerely promise and declare that I will fulfil my duties faithfully and conscientiously in accordance with the Constitution and law and that I will dedicate my abilities to the service and welfare of the people of Ireland. May God direct and sustain me'."

Any one of these forms will do for our own Constitution and the President of the Federation should also take a similar oath before he takes up his duties.

I therefore commend this amendment to the kind consideration and approval of this House.

Mr. President: It is 1 O'Clock now. So the House will adjou till 10 O'Clock to-morrow.

The Assembly then adjourned till Ten of the Clock, on Thursda the 24th July, 1947.

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Volume IV
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Thursday
24th July
1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Price 5 Annas

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 24th July 1947

The Constituent Assembly of India met in the Constitution Hall at Ten of the Clock on Thursday, the 24th July, 1947, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

Mr. President: I understand that there is one member who has not signed the Roll. Will he please do so now?

The following member signed his name in the Register:

Kunwar Shamsher Jang. (Residuary States Gp.)

ELECTION OF MEMBERS TO STEERING COMMITTEE

Mr. President: There is a motion in the name of Mr. Satyanarayan Sinha regarding election of some members to the Steering Committee. Will he please move it?

Mr. Satyanarayan Sinha (Bihar: General): Mr. President, Sir, the motion which stands in my name reads as follows:

"Resolved that this Assembly do proceed to elect, in the manner required under rule 40(5) of the Constituent Assembly Rules, two members to be members of the Steering Committee."

Two of the Honourable Members of this House, Maulana Abul Kalam Azad and Mr. Mane, have resigned from this Constituent Assembly and therefore under the Rules of Procedure they cease to be members of the Steering Committee to which they were elected by this House. I therefore propose that their vacancy should be filled. The manner in which the election will be held will be determined by the President.

Mr. President: Does any one wish to say anything on this Resolution?

Honourable Members: No.

The motion was adopted.

Mr. President: Nominations for the two vacancies in the Steering Committee will be received up to 1 P.M. tomorrow and elections, if necessary, will be held at 4 P.M. on the 26th in the Under Secretary's Room, No. 25, on the Ground Floor, Council House. The election will be by the system of proportional representation by the single transferable vote.

REPORT ON THE UNION CONSTITUTION—*Contd.*

Mr. President: We shall now proceed with the discussion of Clause 1 of Part IV of the Union Constitution.

Shri Sri Prakasa (United Provinces: General): What about my motion which is on the agenda for this morning?

Mr. President: I think it is for tomorrow.

Shri Sri Prakasa: I am sorry.

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): There is one amendment which has not been moved.

Mr. President: There are several amendments which have not yet been moved. I shall be coming to them.

Shri K. Santhanam (Madras: General): I rise on a point of order. I understand the Constituent Assembly Office has not circulated amendments which have been given notice of three or four days ago *because you had fixed a time-limit for amendments before that date.* But you have ruled that when any amendments are given notice of at least one day in advance of the date on which the motion is made, we will be allowed to move the amendments. Otherwise, the whole discussion will become useless because when we are proceeding certain amendments become necessary. For instance, I gave notice of an amendment on Monday. It was the result of discussion between friends and it was necessitated by imperfect drafting. It has not been circulated at all. When I enquired, I heard that all these amendments are simply filed in the office and nothing is done. I think it will put us to a great deal of hardship if things are done like this. I hope you will give a ruling on the subject.

Mr. President: I have given sufficient time for amendments to be put in by members and we can see from the list of amendments already circulated that we have got a very large number of amendments to the various clauses. I am told that even after the expiry of the time-limit which I placed, quite a large number of amendments have come in. If the House so desires, I shall have no option but to circulate them too, but then it becomes very difficult to keep pace with these amendments which go on coming in without end and interruption. So we must stick to the time-limit by which amendments should be put in.

An Honourable Member: The time-limit is automatically fixed by the time taken up here.

Mr. President: It means then that all the amendments will have to be circulated as they come in.

Shri M. Ananthasayanam Ayyangar (Madras: General): That is the practice in every legislature. With very great respect, Sir, I say that your ruling is against Rule No. 32. Rule 32, Sub-Clause (3) says that except as permitted by the Chairman, notice of an amendment must be given at least one clear day before the motion. In the Assembly every clause is moved and as the discussion proceeds, and when amendments suggest themselves to the Members, we give notice of them, 24 hours in advance of the actual discussion. That is all that we have to

do. I submit, Sir, that it cannot be fixed that the time should be two days in advance. It will be reducing the whole thing to a formal and dead affair. If there is not sufficient staff in the office to deal with the amendments, the office has to be enlarged and not our rights curtailed.

Mr. President: I should like to be enlightened on this point by some one who has experience of legislatures. I want to know what is the procedure followed generally. Mr. Purushottamdas Tandon might perhaps enlighten me. A large number of amendments keep on coming from day to day; what is the usual procedure of dealing with them?

The Honourable Shri Purshottamdas Tandon (United Provinces: General): Sir, the usual practice is for amendments to be tabled as the consideration of a bill proceeds, but every amendment has to be handed over to the office some time before the particular clause to which it relates is taken up for consideration. For instance, if you are taking up a clause today and the rule requires that 48 hours' notice must be given of an amendment, the amendment to be moved must have been sent to the office 48 hours before the time at which it is to be considered today. That is all. It is not necessary that all the amendments should be delivered to the office before the consideration of the bill is taken up.

Mr. President: Then we shall follow that procedure and all amendments of which notice is given in time under Rule 32 will be circulated.

Dr. P. S. Deshmukh (C. P. & Berar: General): Sir, in that case, can I move my amendment to Clause 1 of which notice was given on Monday?

Mr. President: So far as Clause 1 is concerned, it was moved several days ago and amendments given notice of after the clause was moved cannot be taken into consideration. We shall now proceed with the other amendments. Shri Chandrasekharaiya moved both his amendments yesterday. Does Mr. A. K. Ghosh wish to move his amendment No. 96?

Mr. A. K. Ghosh (Bihar: General): No.

Mr. President: Sir N. Gopalaswami Ayyangar has an amendment.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, my amendment seeks only a slight verbal change, that in the last sentence of sub-clause (2) of Clause 1, for the words "the votes of the Unit Legislatures" shall be substituted by the words "the votes of the members of the Unit Legislatures". The amendment hardly requires any explanation.

Mr. President: Another amendment is by Mr. J. N. Vyas.

(The amendment was not moved.)

I take it there is no other amendment to Clause 1. If any Member has got any other amendment to this clause which I have left out, he will please take this opportunity of moving it, and not complain later that he did not get an opportunity to do so.

As there is no other amendment, we shall now proceed to discuss the clause and the amendments which have been moved.

Syed Kazi Karimuddin (C. P. and Berar: Muslim): Mr. President, Sir, sub-clause (2) of Clause 1 says:

"The election shall be by an electoral college consisting of—

(a) the members of both Houses of Parliament of the Federation, and

(b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof."

All the amendments which were moved to have the election of the President on adult suffrage have been withdrawn; but I want to bring home to the House why this election should be made on the basis of adult suffrage.

The decision on this point mainly rests on the point of view whether the executive should be non-parliamentary or parliamentary. I have been of the view that in India, looking to the conflicting political parties, diverse ideologies and many diverse factors, for the maintenance of peace and tranquillity and for the effective representation of all parties in the cabinet, it is necessary that there should be a non-parliamentary executive. The only reason that has been advanced why adult suffrage should not be introduced is that a huge machinery will have to be set up for dealing with the elections and the energies of the nation will be consumed in holding these elections. But that is absolutely no reason. In a country like America, the election of the President is held on adult suffrage and my submission is that if every fifth or every fourth year the election of the President is held, and held on the basis of adult suffrage, it will educate the masses. Momentous economic problems of great magnitude will be brought to the forefront. The masses will be educated if the election of the President is held on an all-India basis. Under the present sub-clause (2) of Clause 1, the President will be a puppet of the majority party and the persons who have fought the elections partly on provincial basis and partly on the all-India basis will elect the President for the whole Union.

Yesterday, while discussing the powers of the President, we felt that very wide powers had been given to him. He will be entitled even to suspend any part or the whole of the Constitution of a province. A President who will be afraid of the majority party and be elected by the electorate under sub-clause 2, will not, my submission is, be a man who will represent the entire nation on an all-India economic basis or on all-India issues. I have one more difficulty and that is very important. In order to suit the States, we have agreed that the members of the States' Legislatures shall be members of the Lower House of the Union. It is a patent fact and it is known to everybody that there is no popular rule in the States, and the members of the Legislatures in the States probably will be those who have been nominated by the States or who will not be the real representatives of the people. By electing a President by such representatives who will form one-third of the voters practically, the President will not be representing the people of the States but those who are nominated by the States Rulers. Under these circumstances, it can never be said that the President will be the true representative of the people of the States. Under these circumstances I earnestly appeal to the House that if you want democratic rule, if you want that the President shall be the true representa-

tive of the people who vote on adult suffrage, under the electoral college mentioned in sub-clause 2 to Clause 1, as regards the States particularly, he can never be representative of the people of the land. Therefore I oppose this amendment.

Mr. Mahomed Sheriff (Mysore State): Sir, I am of the opinion that the President of the Union should be elected on the basis of adult franchise. It would be in the fitness of things that the person who would be at the helm of affairs and to whom so many powers would be given and so many responsibilities, should be one who must be elected on this basis. Every voter who is qualified to vote should have the satisfaction that in the election of the person who should govern the country, he should have a voice. It was argued that if this method is to be followed, it would involve so much waste of time, especially at a time when the level of the intelligence of the people is not very high; that this method will not work satisfactorily, and that corruption, bribery, and so many vitiating factors will operate. It seems to me, Sir, that these difficulties will be more than offset by the advantages accruing therefrom. The election will be a great education by itself. It will lead the people to further their political insight which they have got and it will be advantageous in more than one way.

In these circumstances I would suggest that the President should be elected on the basis of adult suffrage. As I said, such an election would have the seal of approval from the point of view of the voters. With these remarks I oppose this motion.

Mr. Tajamul Husain (Bihar: Muslim): Sir, sub-clause (1) of Clause 1 of Part IV lays down that the head of the State shall be called President, and that any person or citizen of the Republic who has attained the age of 35 can be elected as President of the Republic. An amendment has been moved, Sir, to the effect that the election of the President should be held in rotation, that is to say, that for one term of office the President shall be elected from the north of India and for another term of office from the south of India. The reason advanced by the Honourable the Mover is that the people of South India are totally different from those of Northern India. I submit, Sir, this is a very dangerous principle to adopt. If you want to accept this principle that there should be a reservation of seats for the election of the President, every province may claim that in turn the President should be elected from a particular province.

I will give you an example. The people of Western Bengal may very well claim that they are a different people from the rest of India.

An Honourable Member: No, no.

Mr. Tajamul Husain: I am glad that there is a voice saying, no, no. And there should be no difference between one province and another. Therefore I submit, Sir, that the office of the President being the highest in the realm and he being the biggest dignitary of the Republic, we should have the best man. It does not matter from where he comes. It is quite possible that when the election is being held a Bihari or a Christian or a Jain, or a Parsee may happen to be the best man at that time. He may be elected President. Therefore, I have come here to oppose this amendment.

[Mr. Tajamul Husain]

Paragraph (b) of sub-clause (2) of Clause 1 of Part IV lays down that the Upper House of a province where there are two Houses, should not have the right of choosing the President of the Republic. An amendment has been moved by Rai Bahadur Syamanandan Sahaya of Bihar that that right should be given to the Upper House as well. You will find that under sub-clause (a) both the Houses of the Central Legislature have been given the right of electing the President of the Union. There is no difference between the Upper House of the Central Legislature and the Upper House of a Provincial Legislature. Both have got special representation. If you do away with the Upper House then that is a different matter. I might support you on democratic principle but we have decided that we are to have an Upper House for the Central Legislature and there are going to be Upper Houses in some provinces. In that case I would submit that the qualifications of the members of the Upper Houses of the Central and Provincial Legislatures being the same, the members of the Upper House of a Provincial Legislature may be allowed to participate in the selection of the President of the Republic. To me it appears there is no reason why the members of the Upper House of a Provincial Legislature should be deprived of their right, their privilege and their pleasure of choosing their own President of the Republic.

I support the amendment of Mr. Syamanandan Sahaya.

Mr. H. R. Guruv Reddy (Mysore State): Mr. President, Sir, yesterday I was listening with very great interest to the discussions about nominations and particularly about the principles underlying nominations. One of our worthy colleagues was saying that the system of nominations, particularly in States, should be done away with and that if those nominations are adopted elsewhere, they would not be objectionable. Sir, I fail to see the reasoning of this part of the proposition. If nominations are bad, they are bad everywhere and, if they could be accepted, they ought to be accepted on principle everywhere. I fail to see why we should attach sanctity to nominations if an elected person adopts it and consider his action just and proper and right too, and at the same time consider nomination by a ruler of a State or under his direction as something fundamentally wrong and bad. There is no justification for accepting this principle of nomination in one place and rejecting it in another. If you want to do away with nominations, let us do so boldly. But, if for reasons of representation of various interests nominations have to be resorted to, certainly let us have nominations both in the States and in the other Units. No one need be afraid that these nominations will be overwhelming in number. There is no need to fear that the ruler of a State would choose a person who would undo the good things that others attempt to do. In fact, if there is danger ahead, the ruler ought to be presumed to act suitably and put in persons who would represent all interests. I would therefore repeat that if nominations are to be adopted in this House or by the President of the Federal Legislature, what reason is there to say that that system would be bad elsewhere?

The other idea that was put forward by one of the speakers was that it would be a method by which we could coerce the States or other Units to adopt the method of election. That word 'coerce' is something very jarring. It is not a good and sound principle that we should coerce any person to accept or adopt our view. Our endeavour should be to win him over to our view. Therefore, Sir, once the principle underlying nominations is adopted here by the President, it ought to be allowed to be adopted elsewhere also on principle. But, as I said, I am basing my arguments on principles and not on facts. I would appeal to this august House that as the system of nominations has been accepted under the Constitution put forth for India, it ought to be allowed in other places also and it would certainly meet out justice to that section of the population which would be unrepresented otherwise.

Sir, I now pass on to the more interesting, if more disturbing factor, namely the North and the South, the States and the non-States. Sir, personally I feel that the North is not separate from the South, nor is the South separate from the North. I am one of those who believe that any one who is given an opportunity, if he has got the requisite qualifications otherwise, should come up. It is only an opportunity that is sought for. It is not a territorial division. We know certain reasons why the North and the South are frequently apprehensive of this or that thing. A man like me coming from the South, the Mysore State, feels that the North has been getting larger representation on this Constituent body than is due to it and that hereafter it should not be so. Sir, while I honestly feel that the South has been neglected for sometime for various reasons, I do not put the blame for it on anybody or on any section. But I do feel that the South is to some extent neglected. But then it is a question of opportunity being given to the people of the South. If opportunities are allowed I am positive that persons coming from the South can equal if not surpass those coming from the North.

Sir, this question of States and non-States is really perplexing. Coming from a State I very much desire that an opportunity is given to someone from the States to be the Chief of India. But then it is again a vicious thing. The States form only one-third of the entire Dominion. And then the qualifications and other considerations that are to be laid down for this purpose is another disturbing factor. So far as I am concerned, I cannot agree to the separation of States and non-States for the purpose of election. As I said, given the requisite opportunity, given the requisite representation to the States, anyone who has got that courage of conviction to speak out boldly, honestly and fearlessly ought to find a place in the Indian Constitution.

Sir, it is difficult to create a reservation either for the non-States or for the States or even to set up a rotation as it were, in the Constitution. I emphasise the word 'Constitution'. Sir, these are things which should be looked into and provided for in what we know as 'conventions'. We are starting today with a new Constitution for India and the Constitution itself provides for a change. We can work for another three years and if we find any difficulty we could

[Mr. H. R. Guruv Reddy]

have the Constitution changed suitably. Apart from that, I would never invoke the aid of the legislature for the purpose. As I said, it is only a healthy convention and good feeling and understanding between the North and the South and between the States and the non-States that can solve the problem. No legislation can solve it.

In this connection I would like to draw your very kind attention to the Madras mayoralty. There was a lot of bickering so far as the Madras mayoralty was concerned. Some years ago, it should be said to the credit of Sir Ramaswami Mudaliar that he, when he had something to do with that mayoralty, set up a convention. And that convention is being even now respected and persons of various communities and various sections are being elected according to the convention laid down. It is not difficult for us to take this illustration and to follow it up even in the election of our President. Sir, I would once more state that it is convention, good understanding, good feeling between the North and the South, between the States and non-States that will solve this problem, not any law or any clause in the law.

Sir, with this I pass on to another very small matter but which looms very large, the question of the oath, which was very ably put forth by my worthy colleague as an essential matter, and I do not know how that lacuna crept into this report on the Union Constitution. No provision has been made here for the oath. Sir, it is a common thing all over the world, in all well-established Governments, that the Head of the State takes the oath on his entry into that high office. It would be becoming and worthy of our Indian Government that the President should take the oath before an appropriate authority that he would safeguard the constitution that is being framed now and which he is going to work.

With these remarks, Sir, I commend the amendments and principles I have just put forward to the acceptance of the House.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, I do not want to make a speech. I want to suggest that the pace at which we are moving is very slow. At this rate I am afraid we won't be able to stick to the time-table. I suggest that now that we are discussing only the principles of the constitution, speeches may be confined to the particular clause or amendments under discussion and not touch the entire field of the Indian Union Constitution.

Mr. President: I entirely agree with you that we should not discuss the entire field of the Constitution but must confine ourselves to the particular amendment that has been moved or the particular clause which is under discussion. I would also request members to limit their speeches to five minutes, unless in a particular case I find that the question that is being discussed is of such a nature that it requires a longer time.

Mr. H. V. Kamath (C. P. and Berar: General): Sir, two amendments were moved on the floor of this House yesterday, one by my friend, Rai Bahadur Syamanandan Sahaya, and the other by my friend, Mr. Channiah.

Mr. Sahaya's amendment is to the effect that, where the legislature is bicameral, the members of the Upper House, also must have the right of voting in the election for the President. I stand here, to oppose that amendment. It was asked why, when the members of the Upper House of the Union are allowed to vote, the same privilege should not be extended to members of the upper chambers of the Units. If my friend looks at Chapter II, he will find that the Council of States is proposed to be set up on a different basis from that of the upper chambers of the Units. Moreover, we have visualised the President as being an integral part of the Federal Parliament which will be composed of the President and the National Assembly, the National Assembly in its turn being composed of the Council of States and the House of the People. Where the President is an integral part, an essential part of the Federal Parliament, it stands to reason that both Houses should take part in the election of the President.

The other amendment was moved by my friend, Mr. Channiah. That amendment is astounding, bordering on the ridiculous. At a time, Sir, when we have regretfully accepted the division of India on a communal basis, at a time, Sir, when fissiparous and centrifugal tendencies are holding the field, at a time, Sir, when most of us here want to see the unity of our country restored to its pristine condition, it is amazing that a member of this House should stand up and draw a distinction between the north and south of our country. I was inclined to think that at least after the march of Agastya across the Vindhyas and after the battle of Rama with Vali and Ravana, this difference between the north and south of India had been obliterated. We have heard of the Maginot Line in Europe; we have heard of the Siegfried Line in Europe; we have heard of the Curzon Line, the Durand Line in Europe. If Mr. Channiah's amendment is accepted, the day will not be far off when we will have a Channiah line in India between the north and south of India. When we are trying to build a strong State, when we are trying to wipe away all the differences of the past, when the division of the country on a communal basis has been accepted most reluctantly, it is amazing that an amendment of this kind should be propounded on the floor of this House. Precisely for that reason, Sir, I am opposed, for the present at least, even to a linguistic division of provinces. Let us for the present bend all our energies to the task of building up a mighty Indian Union; and let us bend our energies to the task of restoring the unity of our country. Let us, Sir, realize the goal which we have fondly cherished, of a strong united India, an independent India marching forward for the welfare of India and the peace of the world; an India where all Indians, be they Hindus, Muslims, Christians, Parsees or Sikhs all shall march together, as citizens of one common Motherland, a united, strong and independent India. That is the theme, Sir, which is uppermost in our minds. We are still hoping to realize the dream when the unity of our country will be restored. It is in the spirit of the words of that famous song, which is on the lips of all Indians today :

[Mr. H. V. Kamath]

हर सूबे के रहने वाले हर मजहब के प्राणी
सब भेद और फर्क मिटाके सब गोद में तेरी आके
गूंथे प्रेम की माला
सूरज बनकर जग पर चमके भारत नाम सुभागा ॥

(*Har sooba ke rahanewale har mazhab ke prani*
Sab bheda aur farak mitake sab goda me teri ake goonthe premaki malla
Suraj bankar jag par chamke Bharat nama subhaga.)

that I oppose the doctrine which was propounded yesterday by my friend Mr. Channiah seeking to divide the North from the South. One of my friends, Sir, said that the South has been neglected. I fail to see how or in what way the South of India has been neglected. If my friend says that the South means only Madras, I differ from him. I would like him first to define the South of India, whether the South means only Madras or Madras plus Bombay and the various other component parts. I for one think that the South has not been neglected. Today it is the two States in the South, Hyderabad and Travancore which are giving us the headache. If it is the result of neglect and if it is the result of being un-important, I do not know, Sir, what my friend means. These two States of the South today, Sir, are giving most of our statesmen and our leaders a big headache. If my friend thinks that Southern India has been neglected, I do not know, Sir, how he can forget the eminent and leading politicians from Bombay and from Madras who have contributed to the political development, the political evolution of our common Motherland.

Then, Sir, a point was made out that the oath should be taken by the President of the Federation. I agree, but this is not the place where the oath should be mentioned. The oath will certainly find a place in the Constitution when it comes to be finally drafted. Here we are discussing merely the principles of the Constitution and therefore I think that here the mention of the oath to be taken by the President is out of place. For that matter, Sir, we can as well say that the members of the Legislature too should take an oath of allegiance to the country, but you are not mentioning anything like that. They are mere details which are to be taken into account when the Constitution is actually drafted. I therefore, Sir, shall not take the time of the House. I oppose the amendments which were moved by Rai Bahadur Syamanandan Sahaya and my friend, Mr. Channiah.

Shri Ajit Prasad Jain (United Provinces: General): *[Mr. President, I support the resolution moved by Pandit Jawaharlal Nehru. The method suggested herein for the election of the President is very appropriate. Some of the members present have proposed that the President should be elected by adult franchise. Many arguments have been advanced against this proposal. At one place the resolution says different weight will be attached to the votes of different members, *e.g.*, the vote of the member representing lesser number of people will be considered less weighty and that of the member representing greater number of people will be considered more weighty. I would like to say this

*[English translation of Hindustani speech.

much that this balances the defects caused by indirect election. The example of America has been cited where the population is 130 to 140 millions and the President is elected on the basis of adult franchise. I beg to point out that in America it was considered desirable that the Presidential election should not be direct but through "Electoral College". We too have here a proposal for the formation of an Electoral College, the members of which will be elected by the people. Thus the election of our President will also be according to the choice of the people. I had only to say this much. But I feel one difficulty in the scheme sponsored by Pandit Jawaharlal Nehru. According to it, the President will be elected through an electoral college. All members of both the Houses of the Federal Parliament—The Council of States and the House of People—will be the members of the electoral college and they will participate in the Presidential election. The members of the Provincial legislatures and the States legislatures too have been given the right to participate in the Presidential election. So far as the votes of the members of the Unit legislatures are concerned, it is said in the proposal that different weightage will be given to them. For example one vote of a member representing ten thousand voters will be considered equal to 10 votes of a member representing one million voters, Sir.

So far as Unit legislatures are concerned this method is very appropriate and desirable. But it has not been clearly stated in the proposal, whether any weightage will be given to the votes of the members of the Federal Parliament (House of People and Council of States) or what will be the value of their votes or the relative position of those votes. One of the interpretations of the proposal relating the unit legislature appears to be that in the present state of affairs, each member of the House of People has merely one vote. If this is correct, I consider the proposal very wrong. In the draft proposal presented to us, it has been stated at a later stage that on an average a member of the House of People represents one million voters. If he gets merely one vote, this means that members of the Unit legislature who represent only ten thousand voters get 10 votes and a member of Federal Legislature, *e.g.*, the House of People who represent one million voters gets only one vote according to the present scheme. In my opinion this is not fair. The question of giving due weightage to the votes of the members of the Federal Parliament should be reconsidered so that the people might be properly represented.

There appears another difficulty. It is possible that States may have some sort of nomination and it would be difficult to say as to what would be the value of the votes of the nominated members. Again, there might be some constituencies which are not territorial for example, the university and the Labour Constituencies. So far as the provinces are concerned, we have decided that there would be territorial constituencies and there shall be no special constituencies. But in States it is possible that there may be some territorial and some non-territorial constituencies and some nominations as well. Another diffi-

[Shri Ajit Prasad Jain]

culty may arise from the method suggested for giving weightages to different votes of nominated members. If you decide that some sort of weightage should be given to the votes of the members of the Federal Parliament also, although the proposal contains no mention of it—the difficulty arises as to what would be the weight of the votes of the members nominated to the Council of State.

However, I wish to draw your attention to the necessity of a clear provision for classifying and giving weightage to the votes of the members of the Federal Parliament.

With these few words, I hope that you will consider my suggestions.]*

Mr. President: I have got three more names in the list. I find some more members standing up wishing to speak. We have already taken one hour today and we took about one hour yesterday on this clause. If we go on discussing at this rate, I do not think we shall be able to complete even one Part by Thursday next when we wish to close. I therefore desire to request the members to cut down their speeches to the minimum and if any point has already been discussed by any member, not to speak on the same point and repeat the same arguments.

Dr. P. S. Deshmukh: May I suggest, Sir, the system of giving names should be stopped and opportunity should be given only to that member who catches the eye of the President?

Mr. President: I accept that. Hereafter, I shall not accept any slip. Any one who catches my eye will be allowed to speak.

Mr. Yudhisthir Misra (Eastern States Group I): Sir, I support the amendment of Mr. K. Chengalaraya Reddy to sub-clause (2) (b) of Clause 1. Mr. Reddy has moved an amendment to substitute the words "elected members" for the word "members". It would appear to many of the honourable members present here that the word sought to be inserted is unnecessary and superfluous, because under the present constitution, the provincial legislatures would have no nominated members. But I would like to remind the honourable members that there is no corresponding change in the constitution of the State legislatures. In many of the States, especially in the smaller ones, there is an overwhelming number of nominated members in the legislatures. In fact, in some of the States, there is no legislature at all. I represent the Orissa States and I would submit before this House that in some of the States there is no legislature at all. Wherever there is any legislature, the number of nominated members is so large, that the elected representatives have no voice in the Legislative Assembly. In some of the States, the State Congress and the Praja Mandals have boycotted elections to the Legislative Assembly in view of the unsatisfactory franchise. Wherever there is a legislature, the franchise is narrow and based on communal lines, and it has a large number of nominated members. Sir, if you allow the nominated

]* English translation of Hindustani speech.

members to take part in the election of the President, then, some of the States may set up inadequate and bogus representative assemblies and try to influence the election by undemocratic methods. It would be a mockery of democracy if the nominated members are allowed to take part in the election of the President of the future Republic of India. I therefore support the amendment which has been moved by my honourable friend Mr. Reddy.

At the same time, Sir, I would oppose the amendment moved by Mr. Chandrasekhariah. He says that the President shall be alternately elected from the States and non-State units. It is an insult to the States if such a limitation is placed on the election of the President.

Mr. R. K. Sidhwa (C. P. and Berar: General): Mr. President, I had no desire to enter into this debate but for one point which was raised by my honourable friend Mr. Reddy from Mysore State, who advocated the rotation system for the election of the President and in support of that he quoted the instance of the mayorality of the Municipal Corporation of Madras.

An Honourable Member: There are two members from Mysore. The reference may be clarified, Sir.

Mr. President: (To Mr. Sidhwa). You have made a mistake with regard to the name of the speaker.

Mr. R. K. Sidhwa: He came from Mysore, Sir. It is true that in the Municipal Corporation of Madras, there is the rotation system for the election of the Mayor. In the first year a Brahmin is elected, in the second year a Non-Brahmin and in the third year a Harijan. A similar convention prevails in the Bombay Municipal Corporation. In the first year a Hindu is elected, in the second year a Muslim, in the third year a Parsi and in the fourth year a Christian. A similar system exists in the Karachi Municipal Corporation also. In the first year a Parsi is elected, then a Muslim, then a Christian and then a Hindu. Also in the Calcutta Corporation a similar system exists. As I have something to do with this rotation system, in the Municipal Mayoral elections in India, I may say that this rotation was introduced to give an opportunity to every community for the purpose of presiding over this only honoured office. It is only an honoured office, I repeat, Sir. The Mayor has absolutely no power except that he presides at the meetings of the Municipal Corporation. Let me assure you, Sir, he has no executive power although he is the First Citizen of the city. Therefore, you cannot compare the mayoralty with the election of the President. The President of India will be the best man. He will have many executive powers. He will have to select a Premier and he will have to select his Ministers. He will have power of dissolution of the legislature. Over and above all, Sir, under the proposed constitution, he will be the Supreme Commander of the Army. Do you want, under these circumstances, Sir, the President to be elected by rotation? I shall certainly strongly oppose the President being elected on any kind of communal basis or the rotation or provincewise system being intro-

[Mr. R. K. Sidhwa.]

duced. We must have the best man for the President. If the President elected is the best man, we shall elect him for a second time—the best man whosoever he may be, he may have come from the north, south, west or east. We cannot tolerate the election of the President communitywise, or provincewise or anywise as I stated. The convention introduced in the election of the Mayor does not apply in the election of the President. The Mayor is merely a figure-head. He only presides over the meetings. He has no executive power. The convention is only meant to give opportunities to the several communities to occupy the honoured and dignified post of the First Citizen of the city. You cannot mix up therefore the conventional system in the election of the President. I therefore strongly oppose this. There is no amendment to that effect. But implicitly or explicitly no reservation or no convention should be made even by our topmost leaders that we shall elect the President province-wise or from the north, south, west or east of India, or we shall elect a Parsi, a Christian or a Muslim. The best man should be elected. I therefore, Sir, strongly oppose the convention of election provincewise to the office of President.

Shri R. V. Dhulekar (United Provinces : General) : *[Mr. President, I desire to speak a few words in support of the clause which has been moved. Much has been said in support of it but I would not say anything about them. I would draw your attention to only two matters.

Firstly, some members have said that the system of election is very irregular in the States and some of the States representatives to this Assembly have been nominated either by the government or by the rulers and they should not be allowed to take part in the election of the President. In fairness, we must admit that the rulers participating in the Constituent Assembly were subjected to such injustice at the hands of the British government that they have grown apprehensive that if they join the union they would be crushed. A burnt child dreads fire. We must not think that they are degraded and demoralised Indians. Personally I think, that they were placed in such circumstances under the British government that they could not follow the policy which they should have. Therefore, I do not think it proper to raise this point that the nominated members should not be allowed to participate in the Presidential elections. In my opinion we must accept their request that they should be given time so that they may fully realise on joining the Union that the rulers and their people will have the same rights and status that we have. When they have realised the advantages of joining the Union, their autocracy will automtically vanish and the rulers will soon, feel that they are common Indians and they have the same rights that the common people have.

The second thing to which I desire to draw your attention is this : According to this clause regarding the members of the Provincial

*[English translation of Hindustani speech.

legislatures, it will have to be considered as to how many people they represent; and in order to give weightage to the votes, the word "weightage" has been included here. In my opinion, it is unnecessary. It is quite possible that some members might have said that at some places with lesser population they had got comparatively more seats than those having greater population. But in my opinion, no member, whether returned from any provincial legislature or State legislature should be considered so narrowminded that he would demand weightage for his votes in the presidential election. I know, in my own province, some members represent 50 thousand voters while some represent ten thousand and others fifteen thousand voters. But after being elected, he does not think of it at all that he represents so many people. He considers himself only a member of the legislature and behaves in a way befitting his dignity. Therefore the inclusion of the word 'weightage' appears odd but at the same time there is no harm in it and hence I do not oppose it.

With these words I support the clause.]*

Mr. President: The Mover, Pandit Jawaharlal Nehru, may now reply to the debate.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): [*Mr. President, there are many amendments. But the greatest emphasis has been laid on one point: the election of the President on the basis of adult franchise, i.e., everybody should take part in the election. Another amendment is that the word "Rashtrapati" should be substituted by the word "Neta" or "Karandhar" Still another amendment is that the President should be elected alternatively from the North and the South. Again, there is an amendment which says that the members of the Upper Houses also should take part in the Presidential election. There is yet another amendment; but I do not know whether it has been moved or not. According to this amendment, the President should be elected from the States and non-State portion of the Indian Republic (by rotation) alternately.

Lastly, there is an amendment which deals with the oath of allegiance.

I regret very much that I cannot accept any of these amendments except the one proposing that the word "member" should be substituted by "elected member", though the word "elected" is not a definite improvement. The draft would have thoroughly clarified the point: but in spite of this, if you wish to add the word "elected", I am ready to accept it. Something has been said about the oath also. It is obvious that it will figure in the Constitution. At this stage, it does not seem necessary.

]* English translation of Hindustani speech.

[The Honourable Pandit Jawaharlal Nehru]

So far as the question of the election of the President, from the North and the South and from the States or non-State units is concerned, it seems to be wrong in principle. It is not desirable that we elect the President, once from one class and the next time from the other, and framing of rules and statutory provisions for this purpose is highly undesirable.

In answer to the query, as to why members of the Upper Houses should not take part in the presidential election, I submit that there will be much difference between the upper Houses of the States Units and those of the provinces. I cannot say which of the units will have an Upper House. Another point is that the States and the Provinces will have different standards. No body knows what principles the States and the provinces will adopt. If this right is conceded to the Upper Houses, it will create confusion. Therefore, in my opinion, the proposition is correct that in the Centre, both the Houses shall have the right to take part in the presidential election, and in the units, only the Lower House. There is a complexity which has not been clarified : i.e., whether the units will have greater rights than the Centre, whether the members of the Central Legislature will have one vote or more to balance the voting strengh of units. It is for our advisers to make this point clear. Therefore, for the present, in my opinion, as I have already stated and as has already been printed, it should be left as it is. I have already stated in the beginning, and I repeat it once again and if you, too, reflect over it, you will arrive at the same conclusion, that it is best to leave this choice unfettered. I am not prepared to believe that adult franchise is absolutely essential. Obviously, the number of those who will elect the members of the Assembly will be in millions and they are expected to be proper persons. Therefore, when the members of the Assembly themselves are being elected by the votes of millions, where is the necessity for electing the President by adult franchise? Therefore if you desire to frame and promulgate your constitution without necessary delay, then we should avoid complications; otherwise we will not be able to frame our Constitution in the least possible time, and act on it.

If you want to elect the President by adult franchise, then, this would mean that we will have to waste much of our time in holding (Presidential) elections and we will not be able to act according to our new Constitution. Therefore, it is my desire that this resolution should be accepted in the form I have put before you.]*

Mr. Mahomed Sherif: *[Will you kindly throw some light on one matter? You have referred to election in Clause 2(a). When you accept the principle of nomination in this amendment, then why do you not accept this amendment also? Why this contradiction between the two?]*

The Honourable Pandit Jawaharlal Nehru: *[Which clausle did you read?]*

]* & *[English translation of Hindustani speech.

Mr. Mahomed Sherif: *[Page 9, Clause 14(a).]*

The Honourable Pandit Jawaharlal Nehru: *[The question of my accepting or rejecting nomination is not in issue. I accept that particular type of nomination which is recorded herein, that is to say; nominees of units and "scientific bodies" should be taken. This is not the question. I have already said that the President should be elected by the votes of the elected members.]*

Mr. President: I will now put the amendments to vote first. The first amendment which I have to put is the one moved by Mr. Channiah:

"That in sub-clause (1) of Clause I after the word "elected" the words "by rotation either by the North of India or South of India" be inserted."

May I point out to the member the great difficulty which I have felt with regard to this. The clause as it sought to be amended by him will read:

"The Head of the Federation shall be the President to be elected by rotation either by the North of India or South of India."

that is to say, the members alone of the North in one year and alone of the South in the next election will take part in the election, but I think he means not the members who will take part in the election but the President himself. I have pointed this out, and shall now put the amendment to vote.

The amendment was negatived.

Mr. President: The next one is by Mr. Naziruddin Ahmad:

"That in sub-clause (1) of Clause 1, for the words "as provided below" the words "in the manner set out below" be substituted."

It is a verbal amendment. I do not know if it is necessary. Anyhow, I shall put it to vote.

The amendment was negatived.

Mr. President: Then there is the amendment of Rai Bahadur Syamanandan Sahaya:

"That in paragraph (b) of sub-clause (2) of Clause 1, the words "or, where a Legislature is bicameral, the members of the Lower House thereof' be deleted."

The amendment was negatived.

Mr. President: There is an amendment by Mr. Chengalaraya Reddy that

"That in sub-clause (2) (b) of clause 1 for the words "the members" wherever they occur, the words 'the elected members' be substituted."

This has been accepted by the Mover.

The amendment was adopted.

[ ] English translation of Hindustani speech.

Mr. President: Then there is an amendment by Mr. Chandrasekharaiya: that the following new sub-clause be added after sub-clause (3) of Clause 1:—

"3(A). The Presidents shall be alternately elected from the State and the non-State Units."

The amendment was negatived.

Mr. President: There is another amendment by Mr. Chandrasekharaiya that the following new sub-clause be inserted after sub-clause (4) of Clause 1:

"(5). Provision should be made for the President to take the oath of office as in the constitution of U. S. A."

The amendment was negatived.

Mr. President: The next is Sir N. Gopalaswami Ayyangar's amendment:

"That in the last sentence of sub-clause (2) of Clause 1, for the words 'the votes of the Unit Legislatures' the words 'the votes of the members of the Unit Legislatures' be substituted."

The amendment was adopted.

Mr. President: I think these are all the amendments that have been moved. Of these two have been carried. Now the Resolution as amended is put to vote.

Clause 1, as amended, was adopted.

Mr. President: Now we pass on to Clause 2. Pandit Nehru may move the clause.

CLAUSE 2

The Honourable Pandit Jawaharlal Nehru: Sir, I beg to move:

"(1) The President shall hold office for five years: Provided that—

(a) a President may by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People resign his office,

(b) a President, may, for violation of the Constitution, be removed from office by impeachment in the manner provided in sub-clause (2).

(2) (a) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of the Federal Parliament, but no proposal to prefer such charge shall be adopted by that House except upon a resolution of the House supported by not less than two-thirds of the total membership of the House.

(b) When a charge has been so preferred by either House of the Federal Parliament the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(c) If as a result of the investigation a resolution is passed supported by not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated declaring that the charge preferred against the President has been sustained, the resolution shall have the effect of removing the President from his office as from the date of the resolution.

(3) A person who holds, or who has held, office as President shall be eligible for re-election once, but only once."

There are, Sir, we might say, three parts of this Resolution; one relating to the term of office—five years. Now, this is not a matter of high principle, but after consideration, we thought five years will be a suitable term. Four will be too little and more than five certainly too much. The rest of it deals mostly with the impeachment of the Presi-

dent. And lastly, this clause says that a person can only hold office twice, that is to say, not only twice successively, or consecutively, but twice altogether. That means, no man can be President for more than ten years altogether in his life. This question, as is well known, has often been discussed in the United States of America, and normally speaking, nobody was supposed to be President beyond the second term. In the course of the last war, of course, President Roosevelt actually went into the fourth term; but as a matter of fact, ten years is about as much as any normal human constitution can bear this heavy burden. Presumably, when a person becomes President, he will not be too young. He may be in the late forties or fifties and I think it is not right for person to be asked to assume this burden beyond ten years. President Roosevelt, under the stress of circumstances carried on for the fourth term, but he only carried on for two or three months after his election. So I submit that this rule about not holding office more than twice is a good rule and we should adhere to it.

For the rest, I have little more to say. In case there are amendments, I shall deal with them at the end of the debate.

Mr. President: I have got a number of amendments to this clause. Mr. Pataskar.

Mr. H. V. Pataskar (Bombay: General): I do not wish to move my amendment.

Mr. President: Mr. Shibbanlal Saksena.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I have given notice of an amendment to the effect:

"That in sub-clause (1) of Clause 2, for the figure "5", the figure "4" be substituted."

Just now Pandit Nehru was explaining why this term of five years has been fixed upon and said that it was neither too long nor too short for the term of the President. I quite agree with him. But I would like to point out one serious flaw. Later in Clause 13, sub-clause (5) it is stated:

"The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer;....."

That means that the life of the House of the People will be four years. Similarly the life of our Provincial Legislatures is also four years. This means that in the first election the President will continue for one year after the life of the Provincial Legislature or the life of the House of the People comes to an end. In the second election, he will be elected after two years after the elections for the House of the People, in the next election after three years and so on. Thus at the time of electing the President the legislatures may become quite out of date and may not truly reflect the public opinion in the country at the time. Every fourth election of the President will be by legislatures due to expire a few months after. This will be a most undesirable situation. It may be urged that legislatures will not always run their fixed four year terms and some may have to be dissolved earlier. This is true, but such dissolutions of legislatures will be rare. Members of

[Prof. Shibban Lal Saksena]

some fifteen legislatures will elect the President. If one or two among them have been dissolved before completing their normal term, and their members are freshly elected at the time of the President's election, still the members of the remaining thirteen or fourteen legislatures will not be freshly elected, and the overwhelming majority of the electorate will not truly reflect public opinion in the province at the time of the President's election. Therefore it will be much better if the election for the Presidentship is also held once in four years along wih the general election to the Provincial legislatures.

It may be argued that when the general elections take place there will be none left in office after dissolution of legislatures except caretaker governments and it is necessary to have at least the President who will not be a caretaker President. But I submit Sir, the President will vacate his office only when his successor has been elected, so that the office will never remain vacant, nor will it ever be occupied by a caretaker President. Under the 5 years system, it is also possible that when a legislature is elected sometime at the end of the fourth year of the President's term of office, the new members may lose the chance of electing the President during their life time.

I wanted to bring these defects to the notice of the House, but I do not want to press my amendment.

Mr. President: Then you do not move your amendment?

Prof. Shibban Lal Saksena: No.

Mr. President: Hereafter, I think I shall have to ask the members first to move their amendments and then deliver the speech. Mr. Mahomed Sheriff.

Mr. Mahomed Sheriff: Mr. President, Sir, my amendment is:

"That in sub-clause (1) of Clause 2, for the figure "5" the figure "4" be substituted."

That means that instead of holding his office for five years, the President shall hold it for four years. My intention is to make the life of the legislature and the tenure of office of the President the same. That will be in consonance with the strict principles of democracy. The Report says that the legislature should last for four years; if that is so, then immediately the legislature goes, the President also must become *functus officio* and if he still remains President that will be against the principle of democracy. It might possibly be argued that after four years the elections would take place and if the President should be *functus officio* then, who should carry on the administration? For this I would suggest that two or three months before the expiry of the four years the election of the President may be held, so that at the termination of the four years the President would have been elected.

With these observations, Sir, I move my amendment.

Mr. D. H. Chandrasekharaiya (Mysore State): Mr. President, Sir, the amendment which stands in my name runs as follows:

"That in sub-clause (1) of Clause 2, for the figure and word "5 years", the following words be substituted :

"4 years or until the election of a new President whichever event happens later"."

Under our constitution the term of office of the President is proposed to be fixed at five years, while the terms of the lower houses will stand at four years. Under this arrangement the President becomes one year behindhand during the second term of the Lower House, two years behindhand during the third term and four years behindhand during the fifth term. Thus you will find that the President becomes more and more removed from the popular house, as we advance from the second to the fifth term. This is a state of affairs which cannot be accepted with any reason or logic.

The President is proposed to be elected by the members of the Federal and Unit legislatures. It would therefore be right that the Presidential election should reflect the opinion of the legislatures concerned and if the Presidential office becomes old and does not properly reflect the opinions of the legislatures, then there might arise the possibility of conflicts between the President and the legislatures concerned. It is to avoid this possibility that the term of office of the President should be made coterminus with the terms of the popular houses of the Centre and the Units.

It may be argued that one year extra is proposed to be added to the term of office of the President, in order that discontinuity in the policies and measures of administration should not happen soon after the legislatures come to an end. I do not think that this will really happen, taking the experience of countries where this system actually prevails. But even granting for arguments' sake that this difficulty is bound to occur, it may be easily avoided by continuing the same President for a short time longer till the new legislatures come into being and the new President is elected.

Let me refer to the practice adopted in a few well known constitutions of the world. In the U.S.A. the President is elected for four years and he continues during two periods of the lower house. In Switzerland the Federal Council is elected for four years, that being the period fixed for the lower house, as well. In the Soviet Union the People's Commissars are elected for four years, while the Council of the Union lasts for the same period of four years. In Ireland the period of the President is 7 years and the same is the period for the lower house. Thus the practice elsewhere seems to be that the period of the term of office of the President coincides with the life of the lower houses. I think it would be worthwhile to adopt the same practice in our constitution. I do not think that there is any particular charm in the number Five. Therefore taking the practice obtaining elsewhere into consideration and in view of the advantage of fixing the same period for both the term of office of the President and the term of the lower houses, I feel that the amendment I have proposed is a very sound one and I hope that the House will kindly accept the same.

(Amendments Nos. 102, 103 and 104 were not moved.)

Mr. H. V. Kamath: Sir, as the President's position under the constitution is such that he is not likely to misbehave I do not think it is necessary for me to move my amendment No. 105.

(Amendments Nos. 106 to 120 were not moved.)

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, my amendment runs thus:

"That the following new sub-clause be added after sub-clause (3) of Clause 2:

'(4) A person who has been removed from the office of the President under sub-clause 2 will not be eligible for re-election for two terms'."

With your permission and with the permission of the House I would like to amend my amendment and drop the words "for two terms" occurring at the end. My amended amendment will then read: "A person who has been removed from the office of the President under sub-clause 2 will not be eligible for re-election." The principle suggested in this amendment is of course so obvious that I will not endeavour to place arguments in support and I have no doubt that, in drafting, this matter will be set right. A similar amendment was moved to the Provincial Constitution. Hence I thought I might as well place this amendment for your consideration in connection with the Union Constitution.

Mr. H. V. Kamath: Mr. President, as my amendment to sub-clause (3) of Clause 2 is unnecessary I am not moving it.

Mr. President: These are all the amendments, of which I have notice, to Clause 2. If there are any others, Members who have given notice will please tell me and take this opportunity of moving them. As I see none rising, I think the House can now proceed to the discussion of the Clause and also the amendments.

Is there any Member desiring to speak on this Clause? (*Honourable Members* "Vote").

The Honourable Pandit Jawaharlal Nehru: There are two amendments moved to this Clause neither of which raises any question of high policy, the last one especially stresses an obvious thing. It is impossible, practically speaking, for a President removed from office to stand for re-election. I do not imagine any high principles involved in this. We are dealing with important matters. If something else has to be done about it, it will be done later.

As regards the amendment concerning the term of years, that too is not a matter of big policy. We fixed this period for various reasons into which I need not go now, one of them being not to just fit in with the four-year period of the other elections. Now, many members seem to think that, while the elections to the provincial and other legislatures will take place once in four years, this alone will take

place every five years and that after sometime it may so happen that the electors will be rather old in the sense of being elected three or four years previously. Well, it may be that the five-year period for the President will be a fixed term unless the President dies or is impeached or something happens to him. But, so far as the other provincial, etc. elections are concerned it is obvious and it is highly likely that the four-year period will not be strictly adhered to. Elections will necessarily have to be held from time to time. Something may happen; the Ministry might change; it might lose the confidence of the House and so many other things may happen and there will be so many of the provincial legislatures that you cannot say at any time that the membership has remained constant without a change. Membership of the legislatures will be changing from year to year or from quarter to quarter so that this objection that the 'Rashtrapathi' will be chosen by an electorate which itself has been chosen several years previously does not hold at all. There will a changing electorate all the time and the four-year period is only the maximum period. The electorate may remain unchanged for one year or six months and fresh election will take place as it now does. I submit therefore that, in the balance, the five-year period is better.

Mr. President: I will put the amendment to the vote. The question is:

"That in sub-clause (1) of Clause 2, for the figure "5" the figure "4" be substituted."

The motion was negatived.

Mr. President: Now I shall put the next amendment to the vote. The question is:

"That in sub-clause (1) of Clause 2, for the figure and word "5 years", the following words be substituted:

'4 years or until the election of a new President whichever event happens later',"

The motion was negatived.

Rai Bahadur Syamanandan Sahaya: Sir, I wish to say a word at this stage. I do not think it will be right to take a negative vote on my amendment (No. 121). I would rather leave it to the drafters. A negative vote on this amendment will mean that in the opinion of this House an impeached President will be eligible for re-election. If the Hon'ble Mover is not in a position to accept my amendment I would withdraw it rather than risk a negative vote.

Mr. President: I take it that the House grants him leave to withdraw his amendment.

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

Mr. President: The question is that Clause 2 be accepted.

The motion was adopted.

CLAUSE 3

The Honourable Pandit Jawaharlal Nehru: I beg to move that Clause 3 be adopted. It runs as follows:

"3. Every citizen of the Federation who has completed the age of thirty-five years and is qualified for election as a member of the House of the People shall be eligible for election as President."

This is a very simple proposition and I do not think any argument is needed to support it. It has been believed that a person who has not achieved much by the age of 35 is not going to do much later. Nevertheless, normally speaking in India, and more especially in other places, men up to 35 sometimes do not even get a chance to achieve much. Others hold the field. In any case, the age 35 is not a high limit. I think it is a fair limit. It means that a person who is chosen shall have at least a dozen years or so of experience. I think it is therefore a fairly safe age for debarring the candidates. I hope the House will accept the Clause.

(Amendments Nos. 123 to 128 were not moved.)

Mr. H. V. Kamath: While not moving my amendment, I would however, seek clarification from Pandit Nehru on one point.

The expression used for a similar purpose in the Provincial Constitution was "reached the age of 35 years" and here we are using the phrase "completed the age of 35 years". I do not know why we are adopting different language here. Do the two phrases mean one and the same thing?

The Honourable Pandit Jawaharlal Nehru: I am sorry I did not hear a word of what Mr. Kamath said. Anyway I am not responsible for the Provincial Constitution. I consider this a better wording. To say 'completed', means definitely what it says. What the other wording means I do not know. (*Laughter.*)

(Messrs. Thakur Das Bhargava, Rajkrushna Bose and H. V. Kamath did not move the amendments in their names.)

Mr. President: I think these are all the amendments of which notice has been given. I think there is no other amendment. I shall now put the clause to vote.

Clause 3 was adopted.

CLAUSE 4

The Honourable Pandit Jawaharlal Nehru: I move Clause 4, Conditions of President's office.

"(1) The President shall not be a member of either House of the Federal Parliament and if a member of either House be elected President, he shall be deemed to have vacated his seat in that House.

(2) The President shall not hold any other office or position of emolument.

(3) The President shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Federal Parliament and until then, such as prescribed in Schedule. . . . . .

(4) The emoluments and allowances of the President shall not be diminished during his term of office."

There is one small matter which I thought might be cleared up and I shall await an amendment to clear that up. In sub-clause (1), it says "The President shall not be a member of either House of the Federal Parliament". Obviously, he should also not be a member of any provincial legislature. I believe some amendment will be moved to this effect. If so, I will accept it.

Nawab Muhammad Ismail Khan (United Provinces: Muslim): May I ask the Mover as to what he means by the words "The President shall not hold any position of emolument". Does he also mean that he cannot be a director of a company or merely that he cannot hold any position of emolument under the Government?

The Honourable Pandit Jawaharlal Nehru: He shall not hold any other office or position of emolument, whatever it may be. He cannot hold any other office which brings him some gain.

Nawab Muhammad Ismail Khan: I hope you will make it quite clear.

The Honourable Pandit Jawaharlal Nehru: It is perfectly clear. It is dead clear. As the House knows, the convention is that even the Ministers should not hold directorships of companies. That is the convention in many countries, although it cannot be the law. So far as the President is concerned, he should not hold any directorships or any position of profit or gain in business.

Dr. B. Pattabhi Sitaramayya (Madras: General): But that is not conveyed by the wording.

Mr. President: We shall have a discussion of the clause when all the amendments have been moved.

(Messrs. Seth Govindas, Ajit Prasad Jain, S. V. Krishnamurthy Rao and Naziruddin Ahmad did not move their amendments.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to move that for sub-clause (2) of Clause 4, the following be substituted:

"(2) The President shall not hold any position or office under the Union or under any Provincial Government, or in or under any local authority or in or under any business concern (whether incorporated or not) in any honorary capacity or for any emolument or allowance."

Sir, I find that this point has struck some honourable members of this House. What the report says is that the President shall not hold any other office or position of emolument, but it may be that he may hold an honorary office in a business concern. If he is concerned with any religious charitable, educational or similar other institution, there can be no objection, but I think, if he is connected with any business concern even in an honorary capacity, it will be open to serious objection. Any businessman can ask the President to be a patron of his business and he might secure good business because of that. That would be throwing the President into the arena of party politics. I would submit that this sort of business connection should not be allowed. I am only urging this to enable the drafting committee to consider this point. This is all that I desire to submit to the House.

Mr. H. V. Pataskar: Sub-clause (2) of Clause 4 gave rise to doubts and therefore I tabled this amendment which stands in my name, "nor shall he be interested in any business or profession for gain or profit". Since I now understand that it is not the intention that the President should hold any interest in any business, I am not moving this amendment. All the same, I would request that when the final draft constitution is prepared, this should be made more clear.

Shri T. A. Ramalingam Chettiyar (Madras: General): My amendment refers to appointments after the President has held office. I will leave it to the Mover to accept it or not, as he likes, and if he does not accept it, I do not want to press it.

The Honourable Pandit Jawaharlal Nehru: What is the amendment referred to?

Mr. President: The amendment which Mr. Ramalingam Chettiyar has given notice of is "that the person who has held office as President shall not be eligible to be appointed to any salaried office in the Federation" *i.e.*, after he has ceased to be a President, he shall not be appointed. The amendment is not moved formally. Therefore we shall proceed further.

(Messrs. D. Govinda Doss, P. Kakkan, V. I. Muniswami Pillay and P. M. Velayudapani did not move their amendments.)

K. T. M. Ahmed Ibrahim Sahib Bahadur (Madras: Muslim): Mr. President, Sir, I move:

"That in the last sentence of sub-clause (2) of Clause 1, for the words 'the votes of the Federal Parliament and until then, such' be deleted."

Now, Sir, the President of the Federation is the supreme executive authority of the whole State and as such he should be completely free from any party influence when once he is elected. But if the determination of his emoluments and allowances are dependent on any Act of the Federal Parliament, it is quite possible that he will be conscious of the fact that the determination of his salary is subject to party influence and that his actions may on occasions be swayed by such consciousness. It is therefore meet and proper, Sir, that the President's salary should be placed beyond any party influence in order to ensure impartiality in his actions and therefore I have moved this amendment. I hope it will be accepted by the Honourable Mover.

(Messrs. B. M. Gupte, R. K. Sidhwa, Biswanath Das, Thakur Das Bhargava, Syamanandan Sahaya, and S. Nijalingappa did not move their amendments.)

K. T. M. Ahmed Ibrahim Sahib Bahadur: Mr. President, Sir, I move:

"That in sub-clause (4) of Clause 4, for the word "diminished", the word "altered" be substituted."

In the draft it is provided that the salary of the President shall not be diminished, but at the same time there should also be no provision for the increment of salary during his tenure of office as President. The reason is the same as I pointed out when I moved the previous amendment,, *i.e.*, the President should not be in any way conscious that his salary is dependent on any Act of Parliament and it is absolutely necessary that the quantum of his salary should be determined by the Constitution Act itself.

Mr. Ramnarain Singh (Bihar: General): *[Mr. President, I propose :

"that the President must not be a party-man."

When the Objectives Resolution enunciating our objectives was moved in the House I put in an amendment that a proviso that no party would be deemed legal in this country, should be incorporated in the constitution. Every party whether named after any person or following any particular principle should be declared illegal.

The reason for my amendment is this. In many countries of the world there are party governments and they flatter themselves with the thought that they are democratic. What does democracy mean? It means "Panchayati Rajya"—the peoples' government. The very word makes it clear that the party system of government is poles apart from democracy. In India it is believed that the "Panch", is God Himself and its rule is God's rule. I venture to say that the very term party system deteriorates at times into a government of the wicked and the sly. Sometimes it seems as if there is no gentle soul in the party. A few sly persons form a party and establish their own government in the name of Democracy. I appeal to the members of this Assembly that the party system be abolished. So long there is a party true democracy cannot exist. The party system is fatal to democracy.]*

Pandit Jawaharlal Nehru: *[Mr. President, on a point of order. I would like to know what bearing this speech has on my motion.]*

Mr. President: The amendment which he has moved is 'that the President must not be a party-man'.

The Honourable Pandit Jawaharlal Nehru: I should like to understand its bearing.

Mr. President: He wants to put a disqualification on a candidate who wants to stand for Presidentship.

The Honourable Pandit Jawaharlal Nehru: A disqualification which can be measured, weighed, computed somehow. It must have some relation to fact.

Mr. President: So far as the amendment is concerned, I cannot rule it out.

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*[ ]*English translation of Hindustani speech.

Mr. Ramnarain Singh: *[Yes, I will just tell you. I am condemning here the party system and suggest to the House that our President sholud not be a party man. What I mean is this that often the party system of government is mistaken for democracy or Panchayati Rajya. To make it clear let me put a concrete example. Suppose a praticular party has 300 members in the Assembly]*

Mr. President: *[Please do not discuss the party system at length. You just make out your point that the President should not be a party man. Merits and demerits of the party system cannot be discussed here.]*

Mr. Ramnarayan Singh: *[I submit to your ruling, Sir, I shall not discuss that. But it is difficult for me to support the amendment unless we condemn the party system. However, I shall not further press it at the moment. If given a chance, I shall speak on it later. Now I conclude with the remark that it is absolutely essential that the President must not be a party man.]*

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I wish to move an amendment to sub-clause (1) of Clause 4. It is in the following terms:

> "For sub-clause (1) of Clause 4 the following be substituted:
> 'The President shall not be a member of Parliament or of any Legislature and, if such a member be elected President, he shall be deemed to have vacated his seat in Parliament or in the Legislature concerned'."

The principle of Sub-clause (1), which, now, according to the draft before the House, applies only to the Federal Parliament, will be extended by this amendment to membership of the legislatures of the Units. I have advisedly used the terms 'Parliament' and 'Legislature', because, under the principles adopted for drafting in connection with this document, "Parliament" applies to the legislature of the Federation and the word 'Legislature' is confined to the legislatures of the Units. I have nothing more to say.

Mr. President: All the amendments have been moved. The original proposition and the amendments are now open for discussion.

Shri K. Santhanam: Sir, I accept the clause as it is; but I do feel that it requires to be filled up in the drafting stage.

My honourable friend Mr. Ram Narayan Singh moved an amendment which in its present form is not suitable. The President has to stand as a party man. But it is essential that after the election, he should give up all his association with any political party.

As you know, there has been some discussion as to whether the Speaker of the Assembly can continue to be a party man. It has not yet been decided. I hope in the new constitution, the President, the Governors and the Speakers, will all cease to have connection with any political party.

Then, again, there are business connections. Of course, "position of emolument" may cover many things; but it will not cover other things. Take for instance the holding of shares in a company. It is

*[ ]*English translation of Hindustani speech.

not possible to prevent the President from holding shares; but it is essential that as soon as he is elected, he must declare his holdings in any company so that the public will know. During his term of office, he should not be allowed to acquire any shares or immovable property except through a special procedure. We must keep the President far above all these complications. Otherwise, all kinds of rumours and slander will be set afloat. I hope the Drafting Committee which will be set up for drafting will go into the matter and give us a good, comprehensive draft which could be put into the constitution.

Pandit Lakshmi Kanta Maitra: Mr. President, Sir, I wish to put in half a dozen sentences in connection with the amendments which have just been moved.

In reply to the question of my Honourable friend Mr. Ismail, the mover of the resolution has made it perfectly clear that the Union President will not be entitled to hold any office in any joint stock or limited company. He cannot be a Director of a registered or unregistered body. He cannot be in receipt of any salary or emoluments from any quarter. The principle is very salutary and sound. He should be a man who has no other allegiance except to the State, a man who has for the time being dedicated his whole energy to the service of the State. He should be in a position to give undivided attention to his office.

While I am clear on this and the House will agree to this, that he should not hold any office of emolument, I think we should go a step further. I am inclined to think that the President should not hold any honorary office. For instance, he cannot be the President of a Chamber of Commerce; he cannot be the President of a Trade Union organisation and the like. My idea is that from such honorary offices also he should be excluded, because, his position might be utilised for furthering sectional interest. I am not moving a formal amendment. I hope and trust that the honourable the mover of the resolution, when it goes for final drafting, will take note of these things and see to it that in the final draft these things are included.

We are all agreed that the President should be a man, who, like Caesar's wife, should be above suspicion. To ensure this, all these steps should be taken and even the extreme step proposed by my honourable friend Mr. Ram Narayan Singh should be taken into consideration. You cannot eliminate a party man from standing for the Presidentship. But as soon as he gets into the office of Union President, he should certainly sever all his political connections and political affiliations, and he should cease to be a party man. That goes without saying. Keeping in view all these things, I hope the honourable the mover will, at the final stage, take such steps as will make the position of the President unimpeachable and above suspicion.

Mr. M. S. Aney (Deccan and Madras States): Mr. President, Sir, I have to make one or two suggestions in regard to the words 'position of emoluments'', so that when this memorandum goes back to the Drafting Committee for final draft, they may be taken into consideration.

It has been pointed out, and rightly too, that the words ''position of emolument'' are not comprehensive to include many positions in which emoluments are had by persons and therefore the words have to be made more clear. I may point out one or two instances which probably you may not have noted. For example in the C. P. and Berar, there is a system of hereditary village officers, known as Patels and Patwaris. Again there are persons who are called Ex-Pargana officers styled Deshmukhs, Deshpande, etc. They were real Pargana officers in olden times and in recognition of that fact, certain emoluments are given to them by the British Government. My honourable friend Dr. P. S. Deshmukh who is our colleague in this House belongs to that class. They get certain emoluments which are known as *Rasams;* these persons are called *Ex*-Pargana officers. Up to this time, in all matters of elections, Patils, Patwaris and these Pargana officers in C. P. and Berar used to be considered as not holding a position of emolument debarring a citizen from standing as a candidate for election. The second thing I want to mention is there are members of the old Royal family who are getting certain political pensions. They are not called emoluments. Are we to consider that persons in this position should be debarred from standing for election as President? It is not an emolument but a compensation—paid for what was taken from their royal ancestors. It is something in the nature of a private property of the man. These are the three kinds of emoluments, two of which are particularly peculiar to the provinces in which I live. I therefore wish that the Committee which is going to draft the Constitution should consider these points while drafting with a view to exclude them from 'emoluments' in this clause.

With regard to the amendment of my friend Mr. Ramnarayan Singh I would like to state that if a man, no matter what party he belongs to, once occupies the Presidentship, he must sever his connections with the party and remain a non-party man, but you cannot expect a man to be a non-party man before he does take that place. It is something like asking a fish not to be in the water. A person must belong to some party, it may not be a political party like the Congress, it may be some other party, he may belong to some religious party. A man being a social being, is supposed to belong to some kind of a party or group and if we use that word 'non-party man' it will be difficult to elect a President. Therefore, although I cannot subscribe to that particular amendment which he has suggested, I accept the principle that once he is elected to that position, he is expected to be a non-party man and he should sever his connection

with his party and remain there as a man belonging to all or as a man belonging to none. He must take one of the two positions and only in that case he will be in a position to discharge his duties properly.

Mr. President: Mr. Sri Prakasa.

Shri Sri Prakasa: Listening, Sir, to some of the speeches almost compels me to repeat what I said in another place that it seems that some members at least are of the opinion that the President should be a person who has no ostensible means of livelihood. (*Laughter*). I think, Sir, that we should have some trust in the person whom we are putting up for the Office of the President. We should not fetter him in any way. If we do not like the man's profession, then we need not put him up at all. But if we like the man, we can trust him to do his best as President and not allow his profession to interfere with his actions. We can understand your prohibiting a man from practising law or practising medicine as long as he is the President of the Republic but it would not be fair to expect him to give up all or any means of livelihood that he may possess as a non-President simply because he is elected to the office of the President.

How, I ask, would it be possible for a person to transfer all his property, if he has any house property, landed property, shares, etc. to someone else who should keep all these things in trust for him against the day when he returns to non-official life? How are you going to be sure that the person is going to get back on relinquishing his office, all the property which he possessed before he became President? I could agree, if you have a provision that a person who has once been a President will be guaranteed a sufficient competence for the rest of his life. In that case I can understand any member wanting to deprive the President of all or any of his possessions that he may have had before. Even lawyers find it difficult to go back to their profession after they have been out of it for a long time. I am particularly worried about persons who like myself, may possess some landed property. (*Laughter.*) Before all these landed properties are abolished in your province and mine, there may be some provision made for persons—not that I am a candidate—who are in that position so that they could stand for the Presidentship. There may be some provision so that persons who are in the unfortunate position of possessing some properties of that nature may not be wholly debarred.

Sir, it would not be fair either for the person who is put up for the Presidentship to be required to declare all the shares that he may possess in various companies. Suppose he forgets one or two non-paying shares that he possesses, *e.g.*, in the *National Herald* of Lucknow.....

Shri Balkrishna Sharma (United Provinces: General): May I know on a point of information, *viz.*, why has he taken it for granted that the person will have to divest himself of all his properties as soon as he takes up his office?

Shri Sri Prakasa: I thought that was what Mr. Santhanam was after.

Shri K. Santhanam: I merely wanted him to declare his shares so that we will know.

Shri Sri Prakasa: I think, Sir, we must look at the man whom we are putting in the President's position and not at his property or at his shares or anything else. If we trust the man, we ought to put him in that office. If we don't, we ought not to put him there. Even if you make a beggar a President, he can be as dishonest as the biggest shareholder or anyone else. Honesty does not necessarily depend upon the economic position of the individual. Honesty is something apart. What we want is that our President should be a person above suspicion; and whether he is already possessed of any property or not does not really matter. I think we should not hedge in the position of President by any of the provisions that we are seeking to introduce.

Shri M. Ananthasayanam Ayyangar: Sir, it is rather surprising that we should hear these words from our friend Shri Sri Prakasa. It is not that he has entirely misunderstood the scope of the amendment. If he should be chosen as the President, let him continue to be in possession of his properties. But we will assume he becomes the Commerce Member. He ought not to deal in shares the moment he becomes a Member. Otherwise, if a Commerce Member of any Government or the President gets into the share market, there is an assurance that that particular share for which he goes in is a sound one. The next day he may sell them away. He will be in a position to monopolize the shares. We are not going to clothe the President of the Federation with such powers to traffic in immoral business—there are various kinds of immorality. Now, Sir, my friend Mr. Santhanam's amendment is that we should insist upon the President to declare what shares he possesses. My friend Mr. Sri Prakasa says there may be a share lurking in some corner and he may not know. I don't think he will be so negligent about his own affairs. But he expects the President to be negligent about his affairs. As regards business, even if he is a honorary President or Director of a business, and may receive only sitting fees, all the same when he has to give assent to a particular Bill, he may be induced to send it back, particularly if those provisions affect his bank or concern. I don't mean to say that a particular thing will arise but it shows the necessity why the President should not be connected with these directly or indirectly.

Then as regards his being a party man, Sir, it is impossible unless he is a wooden block or a wooden tool. He ought to belong to one party or other. After he is elected, it must be obligatory that he should resign all his connection with the previous party and absolve himself of the allegiance that he owes. To that extent, one may reasonably expect, but to say that he ought not to be a party man is impracticable. I am trying to find out one but I am afraid we may not be able to get a non-party man at all. I can only think of a pial school teacher as a non-party man. Even he may be inclined in favour of his District Board President who may be a party man. Therefore, it is impossible to come across a non-party man in any sense of the word. It is enough if he

gives up his connections with his party after he becomes President of the Federation or the President of the Union. I do say, Sir, that all these limitations and qualifications are necessary so as to ensure that proper administration and proper men will be available.

Mr. President: There is no other speaker. Has the Mover of the clause anything to say in reply?

The Honourable Pandit Jawaharlal Nehru: Sir, a great deal has been said about the emoluments of the President. It seems to me that it is very difficult to make lists of offices which he should not hold. Only a general principle can be laid down and carefully no doubt, but subsequently the rest depends a great deal on convention. If you start making long lists, it means that there may be many things left out which he can do. So normally speaking, one will have to depend upon convention. The point is that he should not be actively connected or associated with the management of any gainful office. Obviously, in the modern world, if he is at all well-to-do, he will have some shares or like Mr. Sri Prakasa he may be a landholder or he may have some other property. There is no chance as far as I can see of Mr. Sri Prakasa being prevented from standing for the Presidentship and I would deem it a calamity if it were so. So I submit that at this moment one need not go further into this question but leave it as it is,—and not only for the drafting but for the convention to grow up.

In one matter I am inclined to agree with what Mr. Santhanam said, although I do not think it is necessary to put it down, and that is that any person in high responsible office should make some kind of disclosure of his connections with business and of his holdings, etc. I think there would be an advantage in that, whether he is a President or whether he is a Minister or any other person in high responsible office. (*Hear, hear.*) I accept, Sir, the amendment moved by Sir N. Gopalaswami Ayyangar, which clarifies sub-clause (1).

There is the question I believe of the emoluments and allowances of the President. A suggestion has been made that some other words should be used instead of "diminished". After consideration we came to the conclusion that "diminished" was the right word. We could use "varied" or "increased or diminished" but on the whole "diminished" was considered the best. The point is that the legislature has in its power to do anything it chooses, but it must not exercise its power to the detriment of the person who has been chosen the President. There is no question of increasing his allowances or emoluments unless the Parliament so desires. You need not check Parliament doing anything, but there is the slight danger possibly of Parliament or the people from making the position of the President impossible. Therefore you say it should not be "diminished". In these days, one does not quite know, suddenly there might be inflation and it may affect the situation so much that all nomal standards of salaries and allowances might have to change. So I don't think any change is needed there.

Last of all, the amendment moved in regard to the President not being a party man—now, I don't know, but certainly I have a certain sneaking sympathy with such a proposition. But inspite of that, it

[The Honourable Pandit Jawaharlal Nehru]

seems to me completely impractical. What is a party man? No doubt, one thinks in terms of the huge party machines running political elections. But it is almost impossible for you to advise all of them. There are all kinds of parties and a person does not become bad because he belongs to a small party or a big party. Everybody is associated, I am afraid, with some group or association. The point is that the President should not function as a party man after he is elected. That, on the whole, is so. I am not myself clear in my own mind as to what his relation to the party he belongs to should be after his election. However, the question does not arise. But in any event, he should function as any one should function, whether he is a party man or not, completely impartially when he is in high office. So, Sir, I regret I am unable to accept any amendment except Sir N. Gopalaswami Ayyangar's.

Mr. President: I will now put the amendments to vote. I will first put the amendment moved by Mr. Naziruddin Ahmad :

"That for sub-clause (2) of Clause 4, the following be substituted :

'(2) The President shall not hold any position or office under the Union or under any provincial Government, or in or under any local authority or in or under any business concern (whether incorporated or not) in any honorary capacity or for any emolument or allowance.' "

The amendment was negatived.

Mr. President: Now the amendment moved by K. T. M. Ahmed Ibrahim Sahib Bahadur :

"That in Sub-clause (3) of Clause 4, the words 'as may be determined by the Act of the Federal Parliament and until then, such' be deleted."

The amendment was negatived.

Mr. President: There is another amendment by the same member that—

"That in Sub-clause (4) of clause 4, for the word 'diminished' the word 'altered' be substituted."

The amendment was negatived.

Mr. President: Then there is an amendment by Mr. Ram Narayan Singh, namely : that the following be inserted as sub-clause (5) of clause 4 :

"(5) The President must not be a party-man."

Mr. Ramanarayan Singh: I do not press my amendment.

Mr. President: I take it the House allows him to withdraw his amendment.

Honourable Members: Yes.

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

Mr. President: The amendment moved by Sir N. Gopalaswami Ayyangar is :

"That for sub-clause (1) of Clause 4 the following be substituted :

'The President shall not be a member of Parliament or of any Legislature and, if such a member be elected President, he shall be deemed to have vacated his seat in Parliament or in the Legislature concerned.' "

The amendment was adopted.

Mr. President: Now the Resolution, as amended, is put to vote.

Clause 4, as amended, was adopted.

The Honourable Pandit Jawaharlal Nehru: Sir, I move:

"*Clause* 5.—Appropriate provision should be made for elections to fill casual vacancies, the detailed procedure for all elections, whether casual or not, being left to be regulated by Act of the Federal Parliament:

Provided that—

(a) an election to fill a casual vecancy shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and

(b) the person elected as President at an election to fill a casual vacancy shall be entitled to hold office for the full term of five years."

The word "casual" here has not been very happily used, Sir; but I propose to accept an amendment to delete it from the various places.

Mr. President: I shall take up the amendments now.

(Messrs. B. M. Gupte, A. K. Ghosh, Rajkrushna Bose, Biswanath Das and S. Nagappa did not move their amendments Nos. 151 to 155.)

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

"That in Proviso (b) to clause 5, the words 'at an election' be deleted."

Sir, this is a purely drafting amendment which ought to be accepted. The Proviso says:

"The person elected as President at an election. . . . ."

The words "at an election" are redundant, as he has been elected. The very fact that he is the person 'elected' as President makes it perfectly clear that he has been elected at an election. The moment you say 'elected as President' the words 'at an election' are necessarily implied, and are therefore redundant. My amendment, as I said, is purely a drafting amendment and it should be accepted, for obvious reasons.

(Messrs. K. Chengalaraya Reddy, Shibbanlal Saksena, Gokulbhai D. Bhatt, D. H. Chandrasekharaiya and C. Subramaniam, did not move their amendments, Nos. 158, 159, 161, 162 and 163.)

The Honourable Sir N. Gopalaswami Ayyangar: Sir, the Honourable Mover has already referred to the use of the words "casual vacancies" in this clause. This expression has given rise to a number of difficulties which deserve to be avoided. Casual vacancies are generally vacancies which occur in the middle of a prescribed term for a particular office, and when they are filled up, the person who gets into the office is supposed to be in the office only for the remainder of the term. But the whole object of this clause is that the person elected for the vacancy should start on a full term of office, and therefore it is desirable that the drafting of this clause should be so changed as to bring out the intention much more clearly than it does now. For achieving this end, I move the following amendment.

[The Honourable Sir N. Gopalaswami Ayyangar]

"That for Clause 5, the following be substituted :

'5. *Vacancies in the office of President.*—Appropriate provision should be made for elections to fill vacancies in the office of President, whether occurring before, or at, the end of the normal term of an incumbent of that office, the detailed procedure for elections being left to be regulated by Act of the Federal Parliament :

Provided that in the case of a vacancy occurring before the end of the normal term of a particular incumbent,

(a) the election to fill the vacancy shall be held as soon as possible after, and, in no case, later than six months from, the date of occurrence of the vacancy; and

(b) the person elected as President at such election shall be entitled to hold office for the full term of five years'."

I do not think any more words are necessary to explain it.

Mr. President: The amendments have been moved. The amendments and the Resolution are now open for discussion.

Mr. Jagat Narain Lal (Bihar: General): Sir, I have to say a few words about the amendment moved by Mr. Naziruddin Ahamad. He seems to think that the amendment proposed by him is merely a drafting amendment; but it is not so. Actually the vacancy may be filled in more ways than one. If the vacancy has been filled otherwise than by regular election, say by nomination or otherwise, then the person shall not be entitled to hold office for the full term. Therefore, I submit, Sir, that the amendment proposed by Mr. Naziruddin Ahmed is not an amendment which can be accepted.

Mr. President: There is no one else who wants to speak on the motion. The Mover may now reply.

The Honourable Pandit Jawaharlal Nehru: Sir, I accept Sir N. Gopalaswami Ayyangar's amendment, that is all.

Mr. President: Then I shall put the amendments to vote. The amendment is :

"That in Proviso (b) to Clause 5, the words "at an election" be deleted."

The amendment was negatived.

Mr. President: Then there is the amendment moved by Sir N. Gopalaswami Ayyangar. It has been accepted by the Mover, but it has to be accepted by the House.

The amendment was adopted.

Mr. President: The amendment becomes the substantive clause.

Now I put Clause 5, as amended, to the vote of the House.

Clause 5, as amended, was adopted.

Mr. President: It is now just 1 o'clock. The House stands adjourned till 10 o'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Friday, the 25th July, 1947.

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1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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Price 5 Annas

CONSTITUENT ASSEMBLY OF INDIA
Friday, the 25th July 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 the Register:

Mr. Mihir Lal Chattopadhyaya (West Bengal: General).

AMENDMENT OF RULES

Mr. President: The first item of the agenda this morning is a motion by Shri Sri Prakasa.

Shri Sri Prakasa (United Provinces: General): Mr. President, Sir, I have the honour to move:

That after Rule 5 of the Constituent Assembly Rules the following new rule be inserted:—

"5-A. Notwithstanding the provisions of Rules 4 and 5 above, the Governor-General of India, may, in pursuance of His Majesty's Government's Statement of June 3, 1947, order fresh elections to the Constituent Assembly from the areas mentioned in para. 14 of that Statement; and thereupon, the members already elected from the said areas, whether or not they have taken their seats in the Assembly in the manner prescribed in Rule 3, shall be deemed to have vacated their seats; and the members newly elected shall be deemed to have been duly elected as members of the Assembly.

This rule shall have retrospective effect from June 3, 1947."

Sir, I venture to place this motion before the House with three objects. The first is that I should like to regularise some of the very undesirable incidents that have occurred during the last few months. Secondly, I want to vindicate the honour of this Assembly and, if you will permit me to say so, with respect, your own honour as the President of this Assembly. And, lastly, I should also like to lodge a protest against the manner in which many things have been done during the last few months (*hear, hear*). Many old members of the Assembly who were originally elected were, so to say, summarily dismissed; new elections were ordered and new members were elected in their places.

Sir, when this Assembly was first elected—it does not matter how it was elected—it claimed to be what it obviously was, a Sovereign Body, fully entitled to make its own Rules of Procedure. It was quite clear that an Assembly like this could not go on without any rules for its own conduct and therefore we prepared a regular pamphlet that gave all the Rules of Procedure of this House. No person could claim

[Shri Sri Prakasa]

that he was ignorant of the existence of these rules. If anyone had taken care to look into this pamphlet he would certainly have found Rules 4 and 5 staring him in the face, which laid down in unequivocal language the method by which new members of this Assembly could be chosen after other members had vacated their seats in the manner prescribed. What has happened, however, is that certain negotiations took place between certain people behind the back of this House, certain agreements were come to, some members were, so to say, summarily dismissed from this House, new elections took place and new members were elected in their places. And we had to acquiesce in that agreement. Whether we like it or not, the fact is that new members have come and old members have gone, and in the bargain our dear country has been cut up into two. I think, Sir, that it is high time that we should at least regularise this procedure by inserting a rule of our own so that we may at least save our faces and be able to say that what has been done has been done according to a definite rule framed by ourselves.

Now, Sir, my second purpose is to vindicate the position of this House and the honour of its President. I looked in vain during those fateful days to see you mentioned anywhere, in the course of those negotiations and to be assured that you were consulted. You may have been consulted as a Member of the Interim Government and as a member of the Congress High Command; but you were nowhere in the picture as President of this Assembly. I have no doubt that if you had been consulted as President of this Assembly, punctiliously careful as you are of the proprieties, you would certainly have asked this Assembly for its own opinion on the subject.

When, Sir, you asked the Assembly whether it would permit me to move a simple Resolution like this the other day, you will surely have consulted the Assembly on such a vital matter if you had been consulted as President. We would have been amply satisfied if we could have been assured by you that you had agreed to the procedure on behalf of the Assembly, that was not sitting at the time. You were perfectly entitled to act on our behalf. The Assembly, however, if I may say so, has been completely ignored. The other day when Pandit Govind Ballabh Pant referred to some sort of a party mandate, you very rightly got up and said that the Assembly does not recognise any parties. But, if I am not mistaken, over and over again during those fateful days, 'the leaders of the two major parties' were referred to in statement after statement that appeared in the Press. So, while you do not recognise the existence of any party so far as this Assembly is concerned, we have to acquiesce in an arrangement that had been come to behind our backs by what are described as leaders of major parties in the country. In this connection I feel that the insertion of this rule might right the wrong to some extent, and we may at least have the feeling that what has been done has been done according to the rules of our Assembly themselves.

Lastly,—and this is as far as I am concerned the most important part—I would like to lodge a protest against all that has happened. I do not think it was right either on the part of the leaders referred to in those statements or on the part of the Governor-General not to have

consulted you, Sir, as our President and the Assembly in that important matter. You know that those negotiations have resulted in the cutting up of our country which is not to our liking. I have no doubt, Sir, that if the original procedure had been followed, and if all who had been elected to this Assembly had attended it and the matter had been placed before the House in the proper manner, we ourselves might have agreed—gladly or otherwise—to the very arrangement that was finally come to over our heads. We would in that case have had the satisfaction that the representatives of the country met in this Hall, and after solemn deliberation decided that for the time being at least in the interests of the country it would be best if we have two separate Constituent Assemblies and two separate parts of the country governed by two Governments. But, as it is, the whole thing has been flung at our face in a manner which it is difficult for an ordinary person to understand,— much less to appreciate. In any case, as things are, there is nothing else for us to do than to agree, as gracefully as possible, to what has happened. I hope that I shall have the unanimous support of the House to my motion to insert this new rule in the Rules of Procedure of this House.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I find myself in a difficulty in regard to this Resolution. But with regard to the Honourable Member's desire to regularise any irregularity if there is one, I have full sympathy. Then again, with regard to the vindication of the honour of yourself, Sir, I also fully sympathise. Then, as regard the protest against many things that have happened, I feel that I should express my neutrality. Things happened in an overwhelming manner with which we poor fellows had nothing to do.

Coming to the merits of the Resolution, it says: that the Governor-General of India, may, in pursuance of His Majesty's Government's Statement of June 3, 1947, order fresh elections to the Constituent Assembly from the areas mentioned in para. 14 of that Statement. . .

Sir, in this famous paragraph are included the following areas:—

(1) Sylhet which is now beyond the jurisdiction of India; (2) West Bengal which is now within the jurisdiction of India; (3) and (4) East Bengal and West Punjab which are outside the jurisdiction of India; and (5) East Punjab which is within our jurisdiction.

Pandit Lakshmi Kanta Maitra (West Bengal: General): I want to know, Sir, whether the Honourable Member is in order in raising a discussion, on the whole of His Majesty's Statement, in connection with this Rule? The Honourable Member has referred to that Statement in extenso and to parts of it which have no bearing on the motion before the House.

Mr. President: I think he was referring to paragraph 14 of the Statement because the motion under consideration itself refers to it, and developing his argument. He is in order.

Mr. Naziruddin Ahmad: That is exactly my position, Sir. In fact, these areas are referred to by implication in the resolution under consideration. I was referring to the areas mentioned in paragraph 14.

Then it is said that as a result of the election of those members and in consequence of the proposed election, the members who have already

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been elected in the first election will from that date be deemed to have vacated their seats. It assumes therefore that till the proposed election the members who were originally elected at the first election would retain their seats, although I understand that all of them have resigned. Then again it is also sought to be made out that upon the proposed election the newly elected members—I believe members who would be elected hereafter—should be deemed to have been elected, and what seems to be impracticable and absurd is that they should be elected with back effect, namely with effect from June 3. I submit that there are three elections to be considered; the first election, the second election through which we, some of the newcomers have come, and the proposed third election. The resolution ignores altogether the second election through which some of us have come. Then the implications of this are that the members who were elected at the second election have no *locus standi* as their place will be occupied by those elected at the first election and things said and done by us in this Assembly would have to be erased from the pages of the report. Then, let us consider the probable time when the third election is likely to take place. The second election took place within about a month of the June 3 Statement, that is in the beginning of July. This third election can thus take place within about a month from this date, that is about the 25th August. If that is so, serious complications will arise. The resolution refers to election from all the areas including those areas which will then be outside India. By 15th August, a new transformation in the country will take place. Two new Dominions will come into existence, and it would be a serious proposition to say that the Viceroy, Lord Mountbatten, will order fresh elections from the areas over which he has no jurisdiction. In these circumstances, I submit that the resolution is impracticable. It will lead to serious anomalies. The resolution purports—at least so the speaker made out—to regularise what has happened. It seeks to vindicate the honour of this House. The Honourable Member supposes that those very members who have been elected at the second election will automatically be elected at the third election, if any. I beg to submit that some of us may not be able to come. It may be that we will have a new set of members. In that case, the so-called regularisation of the election of members like us goes to the wind. I will ask, what is to become of our assertion that we have come here as loyal and law-abiding citizens of India? If we go out, will that declaration stand or will that go? Then what will become of the acceptance by Choudhury Khaliquzzaman Saheb of the National Flag on behalf of the League group here, if he fails to come? Then again, what will become of our signatures in the Great Book which is to go down to history? Will they be scored out and erased? What will become of the T. A. and daily allowances which we have received? Will the monies have to be returned, or will that be made over to the next set of members to be elected and who are to be our legal heirs and representatives? These are some of the serious anomalies which face us in accepting the resolution as it stands.

I have already submitted that I am in full sympathy with the spirit which actuated this resolution. The resolution is however impracticable. It is said that the honour of this House will be vindicated by this. I believe that the honour of the President will not only not be vindicated but will rather be stultified. The Honourable the President has in his wisdom allowed us to take part in the proceedings and do other things in the House. If the resolution is carried, I think it would stultify the action of our own President. I submit that, if the real desire of the Honourable Member is to safeguard the rights and prestige of the House, we could have done it by straightforwardly declaring that we adopt the second election. That would regularise the second election in a decent manner. That will regularise irregularities if any, and safeguard the honour and prestige of this House. I repeat I am in full sympathy with the spirit which actuated the Honourable Member in moving this resolution, but there are practical difficulties, and the best way would be for the House to adopt the second election. With these few words, I submit that the resolution in its practical implications cannot be accepted, and therefore I respectfully beg leave to oppose it.

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): May I draw the attention of the Honourable Member to the last clause of the resolution which says that this Rule shall hae retrospective effect from June 3, 1947?

Mr. Naziruddin Ahmad: That does not solve the problem at all. The point is, will those gentlemen, those Honourable Members who have been elected, come back in a body in the third election? Can any one guarantee that? If the same Honourable Members are elected once again, then this retrospective clause has some meaning. Retrospectivity with regard to members who would be elected for the first time at the third election has no practical meaning, so far as my humble judgment goes. Then there will be overlapping of two batches of members, the first batch and the second batch who will, according to the Resolution, both be members simultaneously for a period. With these few words, Sir, I respectfully oppose the adoption of this resolution.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, I am in entire agreement with the object of the Honourable Mover of this resolution. At the same time, I must say that I find it difficult to understand it. The resolution gives power or seeks to give power to the Governor-General in pursuance of H. M. G.'s Statement of June 3 to do this or that even in the future. I cannot understand at all why the Governor-General should be brought into our rules. Mr. Sri Prakasa's object obviously is to validate something that has been done, something bad according to him, and I agree with him that was not done with due propriety. I agree that we should validate it but not by making any fundamental changes in our rules, even giving powers to the Governor-General in the future about it. So I suggest, Sir, that instead of considering this resolution as it is in this form, it might be referred to a small committee to redraft it with the object of merely making it a validating measure. I would suggest a committee consisting of Mr. Sri Prakasa, Sir Alladi Krishnaswami Ayyar, and Sir B. L. Mitter.

[The Honourable Pandit Jawaharlal Nehru]

This is a legal matter and so I have suggested the names of these three lawyers, although Mr. Sri Prakasa is not much of a practising lawyer. I do not think it will take very much time to redraft it and bring it forward as a resolution, not as an amendment to the rules.

Shri Sri Prakasa: I agree with what my friend Pandit Jawaharlal Nehru has just said. In fact when I tabled this Resolution at the beginning of this Session, the N.-W. F. P. referendum was in the offing and there was the prospect of three more members being dismissed—they have since been dismissed and this is the reason why I have given this power to the Governor-General. Now this is finished, and so far as I can find out there is nothing for the Governor-General to do in this behalf so far as the H. M. G.'s Statement of June 3 is concerned. We might just as well have this in the form of a Resolution as suggested by Pandit Jawaharlal Nehru and I am quite agreeable to this Committee being appointed and to bring forward the whole thing in a sort of validating Resolution. In that case I shall ask for leave of the House to withdraw my motion.

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

The Honourable Mr. Hussain Imam (Bihar: Muslim): What about Assam? Election is still in the offing there.

Shri Sri Prakasa: This Committee will have to consider Assam also. It is just as well that it should.

Mr. President: I was just going to point out that the Resolution as it is drafted has that lucuna also. It does not cover members from Assam other than Sylhet. So I think the best course is, as has been suggested by Pandit Jawaharlal Nehru, that the matter be referred to a Sub-Committee and the Sub-Committee might redraft the Resolution, because, there is, as far as I can judge, no difference so far as the object is concerned. May I take it that it is the wish of the House that this Resolution be referred to a Sub-Committee consisting of Mr. Sri Prakasa, Sir Alladi Krishnaswami Ayyar and Sir B. L. Mitter?

The motion was adopted.

REPORT OF THE UNION CONSTITUTION COMMITTEE

Mr. President: We shall now go on to the consideration of the Report of the Union Constitution Committee. We shall take up Clause 6 of Part IV.

CLAUSE 6

The Honourable Pandit Jawaharlal Nehru: Sir, I beg to move Clause 6 in regard to the Vice-President:

"(1) In the event of the absence of the President or of his death, resignation, removal from office, or incapacity or failure to exercise and perform the powers and functions of his office or at any time at which the office of the President may be vacant, his functions shall be discharged by the Vice-President pending the resumption by the President of his duties or the election of a new President, as the case may be.

(2) The Vice-President shall be elected by both Houses of the Federal Parliament in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President of the Council of States.

(3) The Vice-President shall hold office for 5 years."

I might mention, Sir, that I propose to accept some amendments to this Resolution if and when they are moved. They are rather amendments regarding the wording of the clause and one or two lacunae have to be filled in this clause. With regard to the age of the Vice-President, it is the desire of the House that his age should be fixed also as 35 as that of the President. I am prepared to accept it.

(Shri A. K. Ghosh did not move his amendment No. 165.)

Mr. Nazirudin Ahmad: Mr. President, Sir, I beg to move that for sub-clause (1) of Clause 6, the following be substituted:

"(1) When the President is absent from the Union or when the office of the President is by reason of his death, resignation or removal from office, or when the President is on account of illness or other cause unable to perform his duties, his functions shall be discharged by the Vice-President during the period of such absence, or such vacancy or such inability as the case may be."

Sir, the original Clause contains certain expressions which to my humble mind raise some amount of difficulty. I have suggested this amendment so that the House will consider the difficulty and the House or the Drafting Committee will consider them. The clause allows the Vice-President to function in certain contingencies. Sub-clause (1) refers to the absence of the President. Absence from where is not clear to me. We know that provincial ministers function even in their absence from their headquarters. Does the absence of the President mean absence from the Union, when he goes outside his area to a foreign country or when he leaves his headquarters? I suppose what is meant is "absence from the Union". That is what I have attempted to incorporate in my amendment. The second difficulty is that the Vice-President should act when incapacity is established. There is great difficulty in determining what incapacity means and implies. The President may act in a certain way. One man might take the view that he has shown incapacity. The President might say that the critic has failed to appreciate his capacity, and many others might be willing to agree with him. There is no court of law or tribunal which can adjudicate upon the incapacity. Then the question arises. "Is the President supposed to be incapable of discharging his duty"? This creates a similar uncertainty. So this uncertainty should be removed. Incapacity is a very doubtful expression which may lead to serious complications and squabbles.

Then the other condition is "failure to exercise and perform his powers and functions". That is also equally vague. It is not clear as to what is meant by "failure to perform the powers and functions of his office" and this is also open to the same arguments and objections as the word 'incapacity'. So I have attempted to submit for the consideration of the House a sub-clause which eliminates the fundamental difference, the objectionable features, provided the House considers the same. Apart from that there is nothing new in the proposed sub-clause which I have submitted for consideration. I submit that these serious points should be taken into consideration and the principle of the sub-clause which I have submitted may be accepted, if agreed to. We are not now considering the real draft but to eliminate certain difficult problems, certain objectionable features

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principles. The amendment embodies certain principles and attempts and nothing more. With these words I request the Honourable Mover of the Resolution to consider the same and if possible give effect to the principles embodied therein.

Mr. President: I take it that the word 'vacant' is dropped after the words ". . . or when the office of the President is by reason of his death, resignation or removal from office" in your amendment.

Mr. Naziruddin Ahmad: Yes, Sir. The word 'vacant' should be inserted. It was due to hurry that I lost sight of it. I am grateful to you for pointing it out. The word 'vacant' is to be so read in the context indicated.

(Shri Jadubans Sahai did not move his amendment, No. 167 in the list.)

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. President, Sir, I beg to move:

"That in sub-clause (1) of Clause 6, the words 'or incapacity or failure to exercise and perform the powers and functions of his office' be deleted."

In fact, the reasons for this amendment have in some way been explained by the previous speaker. I submit, Sir, that these expressions are not only very vague, but they are also unnecessary and superfluous in view of the other parts of the section where such contingencies can be met. Who is to declare his incapacity or failure to exercise and perform the powers and functions of his office, or what is the criterion for determining it, these are matters too vague and there is no necessity for such a clause at all. Because, if a man is found to be incapable or fails in the discharge of his duty, there is the remedy of removal from office. Therefore, Sir, I do not think that it is either necessary or advisable to have such a vague clause as that in the Statute. Therefore I move this amendment.

Mr. President: Mr. Gupte, your amendment is the same as the amendment which has just been moved.

Mr. Subramaniam, Mr. Diwakar, Mr. Naziruddin Ahmad, your amendments are the same as the one just moved.

(Amendments Nos. 169, 170, 171, and 172 were not moved.)

(Messrs. Rajkrushna Bose and Shibbanlal Saksena did not move their amendments, Nos. 173 to 176.)

Shri D. H. Chandrasekharaiya (Mysore State): Mr: President, Sir, I beg to move:

"That for sub-clause (2) of Clause 6, the following be substituted:
'(2) The Vice-President shall be elected by the same electoral college. . . '."

Shri K. Santhanam (Madras: General): Sir, there is an amendment in my name in the supplementary list, to sub-clause (1) of Clause 6.

Mr. President: I will take up the amendments in the supplementary list also.

Mr. D. H. Chandrasekharaiya: I beg to move:

"That for sub-clause (2) of Clause 6, the following be substituted:

'(2) The Vice-President shall be elected by the same electoral college as is applicable to the election of the President and by the same method and he shall be an *ex-officio* President of the Council of States'."

Under the Union constitution, the President is proposed to be elected through an electoral college consisting of the members of the two Houses of the Federal Parliament and the members of the Unit legislatures, while the Vice-President is elected only by the members of the two Houses of the Federal Parliament. This means that in the election of the Vice-President, the members of the Unit legislatures will have no hand, whatsoever. I for one have not been able to see as to why this difference is made in the method of the election of the President and the Vice-President. The Vice-President is as much an important functionary of the Federation as the President himself. As you know, he is to act for the President during his absence, and besides he is to preside over an important chamber, of the legislature, namely, the Upper House. I think that the same electoral college which elects the President can be made use of without much difficulty for electing the Vice-President. In the United States of America, the Vice-President is elected through the same electoral college that elects the President. The same method may be adopted here with great advantage. I therefore urge that this amendment of mine is a very reasonable one and that the House will be pleased to accept it.

Mr. President: I think, Mr. Santhanam, you had better move your amendment at this stage.

Sri K. Santhanam: Sir, I move:

"That for sub-clause (1) of Clause 6, the following be substituted:

'During the interval between the occurrence of a vacancy in the office of President and its filling up by election and when the President is unable to discharge his functions owing to absence, illness or any other cause, his functions will be discharged by the Vice-President'."

This is largely a drafting amendment and many of the other speakers have explained why a change is required. I have tried to put it in the briefest and most lucid form possible.

(Messrs. Rajkrushna Bose, A. K. Ghosh, H. V. Pataskar, Brajeshwar Prashad, H. J. Khandekar, and S. V. Krishnamoorthy Rao did not move their amendments, Nos. 178 to 183.)

Mr. B. M. Gupte (Bombay: General): Sir, I beg to move:

"That in Clause 6 the following be inserted as new sub-clause (3) and the existing sub-clause (3) be renumbered as sub-clause (4):

'During the time the Vice-President is acting in the place of the President, the Council may if necessary elect a temporary Chairman'."

Sir, the Vice-President is to be the *ex-officio* President of the Council of States. While he is acting for the President, he cannot function as the President of the Council of States. Therefore provision has to be made for a temporary Chairman and that is done by my amendment.

(Messrs. Rajkrushna Bose, H. V. Pataskar and Shibbanlal Saksena did not move their amendments, Nos. 185 to 187.)

Shri D. H. Chandrasekharaiya: Mr. President, Sir, the amendment which stands in my name reads as follows:

"That in sub-clause (3) of Clause 6 for the figure and words '5 years' the following figure and words be put in:

'4 years or until the election of a new Vice-President whichever event happens later'."

The terms of office of the President is fixed at five years and it is proposed to fix the term of office of the Vice-President also for the same period. I do not see any reason as to why the periods for both the President and Vice-President should be one and the same.

It was urged in the case of the President that he should continue for sufficient time so that arrangements for electing a new incumbent may be finished. But such reasons will not apply in the case of the Vice-President and it will be reasonable and advantageous to synchronize the period of the Vice-President with that of the Lower House. As I explained yesterday, what happens under this arrangement is that he becomes more and more removed from the Lower House as it advances from the second to the fifth term. That is a position which is not very happy.

The House may be aware that in the U. S. A. the Vice-President is elected for four years along with the President and the provision for having a Vice-President in the Union Constitution must have been thought of in the light of the precedent existing in the American Constitution. If that is so, we should be ready and willing to follow the practice adopted elsewhere. The American Constitution is more than 150 years old now and considerable experience must have been gained in working the same. In framing our own Constitution it would be useful to accept the principles or methods adopted elsewhere. It is only by profiting by the experiences of others that we can make our Constitution more perfect and, practical than by inventing something new of which we may not know much. I feel, Sir, that the term of four years for the Vice-President is really in the best interest of the country and is a sound constitutional arrangement.

I have suggested that we might fix the normal period of the Vice-President at four years. But as pointed out in the amendment he may be continued for short period thereafter till a new legislature comes into existence and a new Vice-President is elected. This will enable the office of the Vice-President to remain always filled. I therefore commend this amendment to the kind consideration and acceptance of this House.

(Amendment No. 189 was not moved.)

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

"That in Clause 6, the following new sub-clause (4) be inserted:

'(4) The provisions of Clause 4 above shall, *mutatis mutandis*, also apply to the Vice-President'."

In Clause 4 certain conditions are laid down for the office of the President. It seems reasonable that the same, in so far they are applicable, be also made applicable to the Vice-President. This is only a drafting amendment.

Pandit Thakur Das Bhargava (East Punjab: General): *[Mr. President, the amendment which I wish to move is as follows:

"That the following sub-clause be added after sub-clause (3):

'(4) No person, who has not completed the age of 35 years, can be elected as the Vice-President'."

There does not appear to me the necessity for mentioning many reasons for (the adoption of) this amendment. By accepting Clause (3), the House has accepted and is committed to the principle that no one below 35 years of age can be the President. And because the Vice-President has to act in place of the President, therefore there is little doubt, that the Vice-President should not be under 35 years in age. Besides, the Honourable Member (the Mover) has also expressed his readiness to accept this amendment. Therefore I do not want to waste the precious time of this House on other reasons (in favour of this amendment).]*

[Shri Mohanlal Saksena did not move his amendment. (No. 3 of Supp. List 1).]

Mr. President: I think these are all the amendments of which I have notice. I take it that no other member has got any amendment of which he has given notice. Now the original clause and the amendments are open for discussion.

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, Sir, sub-clause (1) of Clause 6 lays down that in the event of the President's incapacity or failure to exercise and perform the powers and functions of his office, the Vice-President shall carry on such duties. In other words, Sir, if the President is incapable or fails to carry out his duties, the Vice-President shall act for him. I find, Sir, there are two amendments to this resolution. The amendments are in these words:

"that the words 'or incapacity or failure to exercise and perform the powers and functions of his office' be deleted."

That means that if the President is incapable or fails to do his duty, the Vice-President shall have no power to act for him. The question that will arise is that if the President is incapable or deliberately does not do his duty, who will act for him? Suppose he becomes suddenly ill or insane. Surely there must be somebody to carry on the duties of the President. With all due respect to the Honourable the Movers of the amendment, I find the amendments are meaningless and therefore I have no option but to oppose it. Now, Sir, there are two Officers, Heads of the State; one is the President and the other the Vice-President and if the President is ill, of course the Vice-President will act for him but when the Vice-President is doing the work of the President and acting for the President, there is no provision as to who will act for the Vice-President when he becomes temporary President.

Mr. R. K. Sidhwa (C. P. and Berar: General): Suppose the third man also falls ill?

Mr. Tajamul Husain: If the Vice-President is acting as President, then there should be someone to carry on the duties of the Vice-

[ ] English translation of Hindustani speech.

[Mr. Tajamul Husain]

President. There is an amendment by Mr. Gupte which says that as soon as the Vice-President acts for the President, a Chairman should be temporarily elected to carry on the duties of the Vice-President. Now, Sir, I have been interrupted by my Honourable Friend Mr. Sidhwa from Sind. He says, "Well, what will happen if the third man is ill?" If I were to agree with him, I would say "Have the fourth man as well". The only amendment before us is that there should be a Chairman. I support it.

Mr. Bhargava has just now moved an amendment that as there is an age-limit for the President of the Republic there should be also an age-limit for the Vice-President. I think, Sir, this amendment is reasonable because after all the Vice-President automatically becomes President, if the President is dead, and it will look very anomalous that when the permanent President is 35 the Vice-President should be 22 or 21 years of age. I support that amendment.

With these words, Sir, I have finished.

Mr. Mahomed Sheriff (Mysore State): *[Mr. President, in my opinion the words "or incapacity or failure to exercise and perform the powers and functions of his office," should be expunged from sub-clause (2). If these words are retained intact, then I think, there will be many complications and we will have to face numerous difficulties. The purport of Section 6 is that the President is liable to be removed from office, if there is not a proper use of the proposed powers. The exercise of the powers that have been proposed for the President, is a "relative term". It is probable that you might consider proper what to me might seem improper and also that others might consider those powers proper which I might consider improper; therefore as I have already stated, this is a matter which is totally 'relative'. For this reason, I think that these words may be deleted and the remaining ones allowed to remain as they are. My other request is that the appointment of Vice-President should be on the basis of Adult Suffrage. While making the speech concerning the election of the President, the point which I kept in view was, that so far President and Vice-President are concerned—their appointments should be by way of direct election. Even though Pandit Nehru has said many things against this principle, I, as a supporter of democratic principles think it proper that the election of the Vice-President should be on the basis of adult-suffrage. With these words, I support the amendment which my colleagues have moved.]*

Mr. President: I understand that Pandit Jawaharlal Nehru is in a position to accept some of the amendments. I am asking him to accept such amendments, as this will cut short the discussion.

B. Pocker Sahib Bahadur: On a point of order, Mr. President, I would just like to make this submission. The Honourable Member who spoke just now has evidently dealt with some amendments, of which one is mine own. I am not in a position to know whether he supported it or he opposed it or what he said. Therefore it is only just and fair

[ ] English translation of Hindustani speech.

that I should know his attitude. May I request you therefore, Mr. President, to ask that gentleman to give a gist of his own speech in English? He is capable of doing that. He knows English well.

Mr. President: I have ruled before this that I cannot compel a member to speak in a particular language and if the member is suffering under that disability, I think he and the speaker can consult each other and find out what the latter's attitude is. (Laughter).

The Honourable Pandit Jawaharlal Nehru: Sir, the various amendments that have been moved fall roughly in two or three groups. I agree with most of the amendments in the sense that the wording of this Clause 6, as it has been printed, is not very happy. I think in regard to the first matter, i.e. "incapacity", that word is unfortunate. Of all the various amendments put forward I feel that the one which is shortest and clearest is Mr. Santhanam's. That, I think, meets most of the difficulties that have been pointed out. Therefore, I accept it.

I also accept Shri Gupte's amendment:

"That in Clause 6 the following be inserted as new sub-clause (3) and the existing sub-clause (3) be renumbered as sub-clause (4):

'(3) During the time the Vice-President is acting in the place of the President, the Council may, if necessary, elect a temporary Chairman'."

Lastly, I accept the amendment of Pandit Thakur Das Bhargava:

"That the following sub-clause be added after sub-clause (3):

'(4) No person who has not completed the age of 35 years can be elected as the Vice-President'."

I do not think there are any other amendments on my proposal which I can accept.

Mr. Jagat Narain Lal (Bihar: General): I want to have some clarification. Sub-clause (2) provides for the method of election. It says:

"The Vice-President shall be elected by both Houses of the Federal Parliament in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President of the Council of States."

In case there is only one Vice-President to be elected, what is the meaning of having the election carried on on the basis of proportional representation? We have got in our Constituent Assembly Rules, Rule 6, sub-clause (6), the process of elimination. I just want the matter to be clarified, whether in case there is only one Vice-President proportional representation would be necessary.

Mr. President: I am advised by those who are supposed to know these rules of representation that this system of proportional representation can be applied even in case there is only one vacancy to be filled in.

Mr. Jagat Narain Lal: Sir, I know that even in the case of the election of the President the system of proportional representation has been provided for and we have already accepted that rule. But still, I think it is our duty to point out that where there is only one person to be elected, the process of elimination which we have already provided for in the Constituent Assembly Rules is the best method. If

[Mr. Jagat Narain Lal]

that rule commends itself to the House, I submit, Sir, it is not too late even at this stage, to say that when the final drafting is done we should provide for that rule to apply here, instead of the present one which does not seem to have any meaning in order to fill a single vacancy.

Mr. President: As I have already said, those who are supposed to know these rules tell me that this system can be applied even when there is only one candidate to be elected. But if the Honourable Member has any doubts, I may request Sir N. Gopalaswami Ayyangar to explain that view-point.

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): Sir, I think there is some want of comprehension of the principle underlying the system of proportional representation. It can certainly be applied to cases where only one vacancy is to be filled. The application of this principle really ensures that the successful candidate should be returned by an absolute majority of votes. If there are more candidates than two, it may be that, if you apply the simple majority rule, the person who does not get 51 per cent. of the votes cast in the election might have to be declared elected; whereas, if you apply the principle of proportional representation, you will, by the system of transfering votes, be able to get a candidate finally declared elected by an absolute majority. That is why, even in cases where the seat to be filled is only one, we provide that it should be by the system of proportional representation by the single transferable vote.

Mr. Jagat Narain Lal: Sir, I do not propose to enter into further discussion about this point; but my purpose is only to draw the attention of the House to it. I will read sub-clause (5) of Clause 6 of the Constituent Assembly Rules and draw the attention of Sir Gopalaswami Ayyangar to it. Sub-clause (5) says:

"Where there are only two candidates for election, the candidate who obtains at the ballot the larger number of votes shall be declared elected. If they obtain an equal number of votes, the election shall be by the drawing of lots."

And sub-clause (6) reads:

"Where more than two candidates have been nominated and at the first ballot no candidate obtains more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election, and balloting shall proceed, the candidate obtaining the smallest number of votes at each ballot, being excluded from the election, until one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be, and such candidate shall be declared elected."

I think, Sir, Sir Gopalaswami Ayyangar has been referring to this method. I do not know if the system of proportional representation refers to a method like this.

The Honourable Mr. Hussain Imam: May I explain, Mr. President?

Mr. President: Yes.

The Honourable Mr. Hussain Imam: The basic principles of proportional representation are the fixation of a quota. Fixation of quota

takes place by dividing the number of votes by the vacancy *plus* one, and adding one to the result. For instance, if there are 100 voters and the vacancy is one, the quota will be 100 divided by two, which gives 50 *plus* one. So any person who does not secure 51 votes will not be elected The quota is not filled up if nobody secures this number. The man who gets the least number of votes is eliminated; the votes go to the others successively until a person has secured 51 votes. As soon as 51 votes are secured by a candidate, he will be declared elected.

This is a short method of expressing the idea which prevails in elections in France where also elections are held on the basis that the President must have an absolute majority. There they have repeated ballots; but our framers have shortened the process by adopting the single transferable vote. They have attained the same object which France has, but by a simpler and more straightforward method.

Mr. President: I think we had better leave it at that.

Does anybody wish to speak about the amendments or the original clause?

Mr. Tajamul Husain: Sir, it is all finished. Pandit Jawaharlal Nehru has replied.

Mr. President: No, he has not replied. He has only referred to the amendments he is prepared to accept.

Sri M. Ananthasayanam Ayyangar (Madras: General): Sir, I want the Drafting Committee to take note of certain inconveniences that may arise by allowing the clause to stand as it is. No amendment is necessary at this stage. The Vice-President can be an outsider belonging to neither the Council of States nor to the Lower House—the House of the People; under the existing law, in the Council of State the President as well as the Deputy President are both members of the House; the Vice-President under the Constitution will be an extra member with a vote in case of difference of opinion. This matter has therefore to be considered. It has to be considered for the reason that we expect both the Houses to be absolutely elected, except in the case of the Upper House where ten seats are reserved for nomination. He may fill one of the nominated seats, instead of adding to the seats already provided for in the latter clause.

Secondly, he may be a member of the Lower House—the House of the People, in which case provision has to be made that he will cease to be a member of the Lower House the moment he is elected Vice-President of the Federation and *ex-officio* President of the Upper House. Under the existing law, there is provision for a President and a Deputy President for the Upper House. Pandit Jawaharlal Nehru accepted the amendment of Pandit Thakur Das Bhargava, that a temporary Chairman may be elected whenever the President of the Upper House who is the Vice-President of the Union acts as the President of the Union. Instead of that, I would suggest that as soon as the Vice-President is elected for the Union, a Deputy President may also be elected for the Council of States who normally acts when the President is not there. You know, Sir, that in the Assembly there is the President

[Sri M. Ananthasayanam Ayyangar]

and the Deputy President. The Speaker cannot sit all day long and the Deputy Speaker takes his place now and then. Likewise provision has been made in the Government of India Act for a Deputy President who will constantly officiate for the President in the Council of State whenever the President, even during the course of the day is not able to sit, when the sitting goes on. Therefore, instead of having a temporary Chairman, a Deputy President may be appointed from among the Members of the Council of States to officiate when the President who is the Vice-President of the Union is unable to preside.

Thirdly, he may be a member of any House or any legislature elsewhere, in which case also provision has to be made that he ceases to be a member of any of those Houses.

All these, I would like the Drafting Committee to take note of, before they place a detailed Bill, before the House.

As regards the amendment which seeks to reduce the period of five years to four years I see no reason for accepting it. Whether it is four years or five years does not matter so long as the full term of a member of the Council of States is six years which is the normal period after the first retirement by rotation, so that we will not extend it beyond six years.

I therefore find no reason for this amendment and it need not be accepted.

Mr. President: I will now put the amendments to vote. There are two amendments which are in the nature of substitutions of sub-clause (1) of Clause 6, one by Mr. Santhanam and the other by Mr. Naziruddin Ahmad. I will put Mr. Santhanam's amendment first.

The question is:

"That for sub-clause (1) of Clause 6 the following be substituted:

'During the interval between the occurrence of a vacancy in the office of President and its filling up by election and when the President is unable to discharge his functions owing to absence, illness or any other cause, his functions shall be discharged by the Vice-President'."

The motion was adopted.

Mr. President: It is not necessary to put the amendments of Mr. Naziruddin Ahmad and Mr. Pocker Sahib.

The question is:

"That for sub-clause (2) of Clause 6 the following be substituted:

'(2) The Vice-President shall be elected by the same electoral college as is applicable to the election of the President and by the same method and he shall be an *ex-officio* President of the Council of States'."

The motion was negatived.

Mr. President: The question is:

"That in Clause 6 the following be inserted as new sub-clause (3), and the existing sub-clause (3) be renumbered as sub-clause (4):

'(3) During the time the Vice-President is acting in the place of the President, the Council may if necessary elect a temporary Chairman'."

The motion was adopted.

Mr. President: The question is:

"That in sub-clause (3) of Clause 6 for the words '5 years' the following words be added:

'4 years or until the election of a new Vice-President whichever event happens later'."

The motion was negatived.

Mr. President: The question is:

"That in Clause 6, the following new sub-clause (4) be inserted:

'(4) The provisions of Clause 4 above shall *mutatis mutandis*, also apply to the Vice-President'."

The motion was negatived.

Mr. President: The question is:

"That the following sub-clause be added after sub-clause (3):

'(4) No person who has not completed the age of 35 years can be elected as the Vice-President'."

The motion was adopted.

Mr. President: I think the sub-clauses will have to be renumbered and the House will give permission to the Drafting Committee to renumber the sub-clauses. I will now put to vote the clause as amended

The question is:

"That the clause, as amended, be adopted."

Clause 6, as amended, was adopted.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move that Clause 7* be adopted. There is very little that I need say on this clause. The executive authority of the Federation in any State has really to be vested in the head of the State; in this case it will be the President of the Federation. The supreme command of the defence forces of the new State is also to be vested in the head of the State and that explains sub-clause (2)(a).

Practically all the amendments that have been given notice of relate to sub-clause (2)(b). On this point I understand a motion will be made by Sir Alladi Krishnaswami Ayyar for adjourning consideration of this particular item as the matter is being examined with reference to certain aspects of the question that have been brought to notice. That examination will, we hope, be concluded in a day or two, and when we meet next on Monday we shall probably be in a position to consider that on its merits.

Sir, I move.

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* 7. (1) Subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President.

(2) Without prejudice to the generality of the foregoing provisions:

(a) The supreme command of the defence forces of the Federation shall be vested in the President;

(b) the right of pardon and the power to commute or to remit punishment imposed by any court exercising criminal jurisdiction shall be vested in the President, but such power of commutation or remission may also be conferred by law on other authorities.

[Sir Alladi Krishnaswami Ayyar]

Clause 8(4) simply states what exactly is the effect of an agreement. "On an agreement under the provisions of sub-clause (1) being concluded, the Federation may, subject to the terms of the agreement, exercise executive, judicial and legislative functions specified therein through the appropriate authority." It more or less is a provision corresponding to a provision already passed by the House in regard to an agreement between the Provinces and the States. I would ask the House to accept the proposal contained in Clause 8-A.

Col. Shri Maharaj Himmat Singhji (Western India : States Group) : Mr. President, we have had no notice of this amendment. Kindly give us time till Monday to consider it and give notice of amendments if necessary.

Mr. President: This amendment was circulated to members.

Col. Shri Maharaj Himmat Singhji: It was not circulated to us. Many others besides me have not received notice.

The Honourable Mr. Hussain Imam: Notice was received at 4 P.M. yesterday.

Mr. President: Notice was sent at 4 P.M. If the suggestion of the Honourable Member is accepted, we should hold this over to enable members to consider this amendment and give notice of amendments to it. I think members should have sufficient time to give notice of amendments. I think on the whole it will be desirable to postpone consideration of this

The Honourable Sir N. Gopalaswami Ayyangar: I shall have no objection, Sir.

The Honuorable Mr. Hussain Imam: Everybody should have time to give notice of amendments.

Mr. President: Yesterday we decided that notice of amendments can be given to clauses which are to be considered on the following day, by the evening of the previous day. If time is required to give notice of amendments to amendments, I do not know where we will end.

The Honourable Mr. Hussain Imam: The usual practice in such cases is for the Chair to suspend rules of business and to allow the members to move their amendments, if the Chair considers that the matter is urgent.

Mr. President: I think it will be much better to pass it over. So we shall take up the consideration of this at a later date. Similarly, the next addition by Mr. Ananthasayanam Ayyangar may also be held over.

Sri M. Ananthasayanam Ayyangar: I have no objection.

Mr. T. Channiah (Mysore State) : There is one amendment standing in my name.

Mr. President: We shall take up all the amendments when we take up the clause.

Mr. President: The question is:

"That in sub-clause (3) of Clause 6 for the words '5 years' the following words be added:

'4 years or until the election of a new Vice-President whichever event happens later'."

The motion was negatived.

Mr. President: The question is:

"That in Clause 6, the following new sub-clause (4) be inserted:

'(4) The provisions of Clause 4 above shall *mutatis mutandis*, also apply to the Vice-President'."

The motion was negatived.

Mr. President: The question is:

"That the following sub-clause be added after sub-clause (3):

'(4) No person who has not completed the age of 35 years can be elected as the Vice-President'."

The motion was adopted.

Mr. President: I think the sub-clauses will have to be renumbered and the House will give permission to the Drafting Committee to re-number the sub-clauses. I will now put to vote the clause as amended

The question is:

"That the clause, as amended, be adopted."

Clause 6, as amended, was adopted.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move that Clause 7* be adopted. There is very little that I need say on this clause. The executive authority of the Federation in any State has really to be vested in the head of the State; in this case it will be the President of the Federation. The supreme command of the defence forces of the new State is also to be vested in the head of the State and that explains sub-clause (2)(a).

Practically all the amendments that have been given notice of relate to sub-clause (2)(b). On this point I understand a motion will be made by Sir Alladi Krishnaswami Ayyar for adjourning consideration of this particular item as the matter is being examined with reference to certain aspects of the question that have been brought to notice. That examination will, we hope, be concluded in a day or two, and when we meet next on Monday we shall probably be in a position to consider that on its merits.

Sir, I move.

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* 7. (1) Subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President.

(2) Without prejudice to the generality of the foregoing provisions:

(a) The supreme command of the defence forces of the Federation shall be vested in the President;

(b) the right of pardon and the power to commute or to remit punishment imposed by any court exercising criminal jurisdiction shall be vested in the President, but such power of commutation or remission may also be conferred by law on other authorities.

Sir Alladi Krishnaswami Ayyar (Madras : General) : Sir, I move that the consideration of sub-clause (2)(b) be postponed. I do not think it is necessary to give any detailed reasons for this. The clause requires closer examination with reference to the powers of the provincial Governor, the position of the States, etc., and if the House agrees the consideration of this clause may be taken up on Monday.

Mr. President: The question is :

"That the consideration of the Clause be postponed."

The motion was adopted.

The Honourable Mr. Hussain Imam: Sir, what will be the position about amendments? When the new version of the clause comes up will an opportunity be given to the House to move amendments to it?

Mr. President: Yes, certainly; when certain changes are proposed members will be given an opportunity to give notice of amendments.

The Honourable Sir N. Gopalaswami Ayyangar: The procedure may be that when this examination is concluded notice of an agreed amendment will be given by somebody and copies of that will be circulated to Honourable Members who will be at liberty to propose amendments to that amendment.

CLAUSE 8

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move *Clause* 8, *viz.* :

"8. Subject to the provisions of this constitution, the executive authority of the Federation shall extend to the matters with respect to which the Federal Parliament has power to make laws and to any other matters with respect to which authority has been conferred on the Federation by any treaty or Agreement, and shall be exercised either through its own agency or through the Units."

This merely states the general principle that executive authority is co-extensive with legislative authority. The only exception is in respect of matters which are provided for by special treaties or agreement and that occurs at the end of this clause.

(Amendments Nos. 201 and 201-A were not moved.)

Sir Alladi Krishnaswami Ayyar: Mr. President, I have given notice of an amendment to Clause 8 as Clause 8-A.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, Clause 8 may be put to the House first. The amendment proposed is to have a new Clause as 8-A.

Mr. President: As a matter of fact I have got notice of two amendments, one by Sir Alladi Krishnaswami Ayyar and the other by Mr. Ananthasayanam Ayyangar for the addition of a new clause. I had better dispose of Clause 8.

As no one wishes to speak on Clause 8 I shall put it to the vote.

Clause 8 was adopted.

Sir Alladi Krishnaswami Ayyar: Mr. President, I seek to amend Clause 8 in the following manner :

Mr. President: It is not an amendment to Clause 8, but an addition as **Clause 8-A.**

Sir Alladi Krishnaswami Ayyar: Yes, Sir. I may mention that, in the course of the clause, I have referred to the expression 'the Union' and substituted 'Federation'. I trust the House will give me leave to substitute the word 'Federation' for the word 'Union'. That is a slip This is the amendment I am moving:

"That after Clause 8, the following new clause be inserted:

'8-A. (1) The Government of the Federation may, by agreement with any Indian State but subject to the provisions of the Constitution, in regard to the relationship between the Indian Federation and an according Indian State, undertake any legislative, executive or judicial functions in that State.

(2) Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to and governed by any Act relating to the exercise of foreign jurisdiction by the Parliament of the Federation.

(3) If any such agreement covers any of the matters included in an agreement between a Province and a State under Clause 8 of the provincial constitution, the latter shall stand rescinded and revoked.

(4) On an agreement as per the provisions of sub-clause (1) being concluded the Federation may, subject to the terms of the agreement, exercise the legislative, executive or judicial functions specified therein through appropriate authorities'."

In support of this Clause, with your leave, I would like to say a few words. The object of this clause is to bring it in line with a clause already passed by this House in regard to the provincial constitution in the provincial sphere. That confers powers on the provinces to undertake the administration of certain departments ceded to them by a State as a result of an agreement in the provincial sphere. The object of this clause is to give an overriding power to the Federation. So far as sub-clause (1) is concerned, it refers only to acceding States. The acceding States may accede to the Federation in respect of particular subjects. Even in regard to the other subjects, they may be willing to enter into an agreement with the Indian Federation in regard to the exercise of particular functions. The object of this Clause is to enable the acceding States to enter into such agreements with reference to subjects not included in the terms of accession.

The second sub-clause refers to States which do not accede to the Federation, but yet may be willing to enter into agreement with the Indian Federation. Any such agreement will of course be subject to any Foreign Jurisdiction Act that may be passed in the exercise of the plenary powers of the Legislature as a Sovereign Legislature. That makes provision for it. "Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to and governed by any Act relating to the exercise of foreign jurisdiction by the Parliament of the Federation".

The third sub-clause is intended to prevent any conflict between the Provinces and the State on the one hand and between the Federation and the States on the other. Even in the provincial constitutions we have made a provision to the effect that it shall be subject to the control of the Federal Government. The object of this sub-clause is that if an agreement is entered into between the Federation and a State and that agreement covers the field already covered by the agreement between the Provinces and the State, this agreement between the Centre and the State must have dominance over the agreement entered into between the Provinces and the State.

[Sir Alladi Krishnaswami Ayyar]

Clause 8(4) simply states what exactly is the effect of an agreement. "On an agreement under the provisions of sub-clause (1) being concluded, the Federation may, subject to the terms of the agreement, exercise executive, judicial and legislative functions specified therein through the appropriate authority." It more or less is a provision corresponding to a provision already passed by the House in regard to an agreement between the Provinces and the States. I would ask the House to accept the proposal contained in Clause 8-A.

Col. Shri Maharaj Himmat Singhji (Western India : States Group) : Mr. President, we have had no notice of this amendment. Kindly give us time till Monday to consider it and give notice of amendments if necessary.

Mr. President: This amendment was circulated to members.

Col. Shri Maharaj Himmat Singhji: It was not circulated to us. Many others besides me have not received notice.

The Honourable Mr. Hussain Imam: Notice was received at 4 P.M. yesterday.

Mr. President: Notice was sent at 4 P.M. If the suggestion of the Honourable Member is accepted, we should hold this over to enable members to consider this amendment and give notice of amendments to it. I think members should have sufficient time to give notice of amendments. I think on the whole it will be desirable to postpone consideration of this

The Honourable Sir N. Gopalaswami Ayyangar: I shall have no objection, Sir.

The Honuorable Mr. Hussain Imam: Everybody should have time to give notice of amendments.

Mr. President: Yesterday we decided that notice of amendments can be given to clauses which are to be considered on the following day, by the evening of the previous day. If time is required to give notice of amendments to amendments, I do not know where we will end.

The Honourable Mr. Hussain Imam: The usual practice in such cases is for the Chair to suspend rules of business and to allow the members to move their amendments, if the Chair considers that the matter is urgent.

Mr. President: I think it will be much better to pass it over. So we shall take up the consideration of this at a later date. Similarly, the next addition by Mr. Ananthasayanam Ayyangar may also be held over.

Sri M. Ananthasayanam Ayyangar: I have no objection.

Mr. T. Channiah (Mysore State) : There is one amendment standing in my name.

Mr. President: We shall take up all the amendments when we take up the clause.

CLAUSE 9

The Honourable Sir N. Gopalaswami Ayyangar: I beg to move Clause 9:

"The Executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects, until otherwise provided by the appropriate Federal authority."

At the present moment, both federal and unit subjects are within the jurisdiction of the executive authority of an Indian State. When federation comes into existence and certain subjects are assigned to the Centre, their administration which is already in the hands of the State authorities, it is proposed, should continue in these hands until the appropriate federal authority makes other provision for their administration. The general principle, as I have already stated in connection with the previous clause is that the executive authority of the federation is co-extensive with its legislative authority. That principle is respected in this clause. The only thing that is provided for here is that where that administration is in the hands of the State authorities now, that agency should continue until the federal legislature or other appropriate federal authority chooses to make other provision. That is really for the purpose of preventing a hiatus in administrative jurisdiction particularly at the time of the inception of the federation. There are amendments to this, Sir, but I shall not deal with those amendments in any detail. But there is one amendment in the names of a number of Prime Ministers of Indian States. That amendment is really a reproduction of Section 125 of the present Government of India Act. I have since given notice of an amendment in substitution of it and, if the Prime Ministers who have given notice of this amendment, agree to withdraw their amendment, I shall move mine.

Mr. President: As I understand it, Sir Gopalaswami, the amendment of which notice has been given by the Prime Ministers is to be inserted as Clause 9-A. It is not in substitution. Is that the one you are speaking of?

The Honourable Sir N. Gopalaswami Ayyangar: I stand corrected. I think what you have stated is correct, but I say that, if that particular addition which is proposed by the Prime Ministers is not moved, I shall be prepared to move an amendment to Clause 9 which I hope will be acceptable to them.

Sir B. L. Mitter (Baroda State): In view of Sir Gopalaswami Ayyangar's amendment which he proposes to move, we do not move the amendment which stands in our name.

The Honourable Sir N. Gopalaswami Ayyangar: I move that at the end of Clause 9 the following be added:

"In cases where it is considered necessary."

These words hardly need any explanation.

Mr. President: We will now take up the other amendments. Mr. Chandrasekharaiya.

Mr. D. H. Chandrasekharaiya: Mr. President, Sir, I beg to move that for Clause 9 the following be substituted:

[Mr. D. H. Chandrasekharaiya]

"The executive authority of the ruler of a federated State shall continue to be exercisable in the State with respect to federal subjects subject to inspection of and the directions from the head of the federal executive."

Sir, the clause as it stands provides for the exercise of authority in regard to federal subjects by the rulers of federating States until other arrangements are made by the federation. Now, this exercise of authority is not made subject to the supervision and control of an appropriate federal authority. Such an uncontrolled exercise of authority in respect of federal subjects is neither correct nor helpful. I have therefore proposed in this amendment that the exercise of authority should be brought under the inspection and direction of the head of the federal executive. This is one aspect of the amendment.

The other aspect is that the State authorities are proposed to be used for administering federal subjects only for a time till other arrangements are made by the federation. My point is that if the State authorities could be used for a temporary period, why should they not be used permanently? Since the exercise of authority by the States is proposed to be controlled and directed by the head of the federation, any mistakes committed can be pointed out then and there and the administration set right. So far as the States are concerned, there will perhaps be a limited number of federal subjects for administration, and in such a case, will not be undertaking a responsibility beyond their capacity to shoulder. Besides, there are bigger States like Mysore, Baroda, etc., which have got efficient modern and well-organised administrations and I am sure that any other arrangement will not come up to the level already attained by such administrations.

It has, however, been proposed by Sir N. Gopalaswami Ayyangar that the words "In cases where it is considered necessary" may be added at the end of Clause 9 to serve as a compromise between differing views. I do not think that such an amendment will improve the situation very much as it gives room for saying that it is considered necessary in every case.

In conclusion, firstly I propose that provision should be made for inspection and control of federal administration within State limits and secondly, State authorities should be permitted to administer Federal subjects on a permanent basis. I pray that the House will be pleased to consider and accept the amendment proposed by me.

Mr. Himmat Singh K. Maheshwari (Sikkim and Cooch Behar Group): Mr. President, Sir, the amendment which stands in my name is a comparatively minor one. It only seeks to substitute for the words "by the appropriate Federal authority" occurring in Clause 9 the words "by virtue of a Federal law". I will read out the clause as it will be if the motion is accepted:

"The executive authority of the Ruler of a Federated State shall, notwithstanding anything in this Constitution, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has powers to make laws for that State, except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal Law."

[Shri Himmat Singh K. Maheswari]

The word 'authority', Sir, is not so very clear. It might mean an Under-Secretary of the Federal Government. What therefore I wish the House to accept is a provision that where the executive authority of a Federation has to be exercised in a State, it should be by means of a Federal Law and not merely by an order of a Federal authority. Perhaps, Sir, the amendment is quite unnecessary because the drafters of the clause might ultimately have intended to make this expression more clear. I am not certain at all and in any case my object will be served if the Drafting Committee will kindly consider this matter at the appropriate time.

(Messrs. Kishori Mohan Tripathi, B. M. Gupte, Bishwanath Das, H. R. Guruv Reddy, Jainarain Vyas, S. V. Krishnamurthy Rao and K. Chengalaraya Reddy did not move their amendments, Nos. 204 to 210.)

Mr. President: I think these are all the amendments of which I have been given notice. Now the clause and the amendments are open to discussion. Does any member wish to speak about either the Clause or the Amendment?

Shri Mahavir Tyagi (United Provinces: General): *[Sir, this part of the Constitution is very important because it concerns a vast number of people of India residing in the States. At present, they enjoy enough powers of internal administration but in spite of this, in every state there is a Resident who represents the Paramount power. He has some voice in the administration and exercises a check on the powers of the rulers. Often he has safeguarded the rights of the people. If with the end of the office of the Resident, the Assembly does not provide some *via media* for safeguarding the peoples' rights, I venture to say, Sir, our functions of constitution-making will not be considered successful. When the States and their people join our Union, it is the duty of the Assembly to look to the welfare of the States' people and protect their rights. I stand here to take a little of your time so that the States people may not have cause to complain that when the question of the peoples' rights came before the Assembly, it remained silent and sacrificed the interest of the people in order to get the co-operation of the rulers. I do not want to delay the proceedings by bringing any amendment, because all the rules and provisos which are being framed here will come up before the Assembly in their final shape. Then it will have the right to scrutinise and change them. What I mean is this: At present there is a Resident who exercises some control and check on the powers of the rulers. But with the abolition of his office there is no machinery to control the authority of the rulers. The Negotiating Committee must place before the House now or later at some opportune stage in very clear terms as to what arrangements it has made to control the authority of the rulers. In the present set up, the rulers have all the powers that the Union will have and also powers which they do not possess at present. Its result will be that the despotic and autocratic States will become all powerful and there will be no

*[English translation of Hindustani speech begins.

[Shri Mahavir Tyagi]

check on them. There are many States which have no legislature at all. Under the circumstances, if the present wide and discretionary powers are allowed to remain with the rulers, their joining the Union would be an advantage to them. We are paying this as the price to include the States in the Union. If the rulers are allowed to retain their present absolute powers, every ruler will be a gainer by joining the Union, because the States people have so long been fighting against their despotism with the help of the Congress and other such organisations and now the people will not receive this help any more from them. Henceforth, the rulers will use their powers in their own arbitrary manner. Therefore, though it is proper to concede to the rulers whatever powers they at present enjoy or to give them power similar to that of the Union, some restrictive provision must be incorporated in the Constitution so that they may not misuse the powers granted to them. When the Government of India Act was being framed in 1935 such restrictive provision was suggested in it in order to check the authority of the rulers. It is clearly stated in the said Act that any law of the States, which is contrary to or is incompatible with that of the Federation, shall be deemed null and void and the law of this Federation shall prevail. The only difficulty at present is that instead of one, there are two Dominions now, one of Pakistan and the other of India. Both the dominions are anxious to include in their Dominion a greater number of States than their rival. Because of this rivalry, the Princes are raising the price of their co-operation higher. I do not consider it desirable to concede to them more and more powers only in order to include them in our dominion. They are not willing to forego any of their powers in order to join the Union. By joining the Union they will be gainers in as much as they will receive military protection from the Union, but what benefit is that to us? We will only increase a member in our family. The States will receive tremendous help from this vast Dominion but in return for the privileges how many of their rights are they ready to concede to us? We must have everything before us. Every detail of the negotiation that is going on between our Negotiating Committee and the States must come before the House. It is only then, when we have considered all these, that we should decide as to what power the rulers should be allowed to retain and what amount of control the Union should exercise over them. This clause, as it stands at present, grants wide powers to the States but it does not mention as to what power the Union will have over them. I do not want to put any obstacle to the passage of this resolution but I want that this must be established as a convention that when a member speaks it is not imperative for him either to oppose or support the resolution. When an important matter is being discussed in the House a member must have the right to express his views without supporting or opposing the motion so that his views may be recorded. I stand here only for this purpose that my views may be recorded and our Negotiating Committee may know that a section of the House entertains such views. I want that my speech should bring to light what "liberties" the States have and what further powers we are granting to them. I demand that when we are representing here the

people of the States, the rulers must not be given powers beyond what they had. They have had ample powers. When they have joined the Union, the office of the Resident will be abolished and some of the States will become despotic. Therefore, without meaning any offence to and without making any allegation against any State I wish to say that when the States are joining our family—the Indian Union—they must respect the principles of our democracy. Despotic states have no place in our Union. Because of the assurances from some leaders, States may feel today that they will have all the liberties in the Union; but I want to make it clear to them that, though the House is accepting all their terms, their joining the Union will put their despotism in danger. India and this Assembly will soon put an end to despotism and the States must join the Union with this definite knowledge. The general public demands it and if for some reasons this Assembly cannot do away with despotism, the nation will, after the expiry of the existing Assembly, call a new Constituent Assembly which will not only solve our economic problem but the political problem too. That revolutionary Assembly will not allow even a trace of despotism to remain in India. The Union of India will not allow the black spot of despotism to remain long on her fair face. This is what I have to say.]*

The Honourable Mr. Hussain Imam: Mr. President, the remarks made by the last speaker asking for a minimum of democracy in the constituent units of the Federation is one on which I hope there will be no difference of opinion in this House. There are certain standards, and certain measures which are regarded as the bare minimum, as the *sine qua non* of a decent existence; and it is wrong in this age for any one to claim the privilege of divine right to rule as they please. I am one of those persons who believe in moderation as well as in negotiation. But there is a limit beyond which you cannot carry on these two processes. There are certain bedrock principles which have to be accepted. Because of the fact that the foreign Government had sanctioned the existence of 560 state units, it is not necessary that this Constituent Assembly should also accept the separate existence of these units. In these days it is almost a common principle that various small units cannot fight in the battle of life. Look at industrialisation and cottage industry. Cottage industry is every day being eliminated. We are trying to protect it and give it support because it is to the greater advantage of the worker than the mill industry. Similarly, if it were to be greater advantage of the common man to have the 560 units, I for one would have supported them. But many of the units are so small that they themselves have considered it essential to join together and form bigger units. This is a move in the right direction and if it is developed to the full extent to which it should be developed, it is possible to allow them to exist even today. But if individuality prevails and if the move for having a union of States where they can give common privileges and common advantages to which a citizen is entitled, is not put forward, I am afraid

*[English translation of Hindustani speech.

[The Honourable Mr. Hussain Imam]

that the existence of the States will be jeopardised. I endorse the appeal of the previous speaker that this Assembly and those who are in charge of negotiation should look to it that the right of the common man in the States which is as precious to us as the citizens of British India is safeguarded. (*Hear, hear.*) They must be protected with as much care and as much solicitude as we are taking in the other units, the provinces. There should be a minimum standard of democracy, and minimum rights of citizenship which should not be denied to any one in the continent of India. No matter whether it is a big State or a small State, they must all strive to uplift and if we cannot uplift, we will be failing in the charge which has been entrusted to us. Independence is not worth anything if we allow a large part of the units to remain in the same degraded condition in which they existed before the departure of the British. I therefore endorse the appeal and hope that something will come out of it.

Mr. Jainarain Vyas (Jodhpur State): *[Mr. President, at present the whole question of States is not before the House but we have only to consider as to what authority the Princes should be given in respect of central subjects. Therefore, I shall confine myself to this only and I would like the House also not to go beyond the scope of the subject.

It is true that the Princes or the States are going to have the powers and authorities which they do not have in the current set-up. But the words (of the resolution) show that power would continue with those who had it: not more than this, unless some other arrangements are made by law. In spite of this, as our Federal subjects are numerous and of various types it is apprehended that the powers granted to the Princes in respect of these subjects might be abused in some States. But now that we all have joined the Union, we may hope or rather we should appeal to the Rulers to fall in line with the rest of India. The Provinces too should be requested to make proper use of the powers granted to them. Under the circumstances, we need not oppose such clauses or sections. Mr. Tyagi has just said many things with reference to the general question concerning states. I am a State subject and represent the States people. I do admit that the representatives of the States peoples do not hold the same status as the ministerial representatives hold. They speak on behalf of the Government of the States. We have not attained this status. Really this is a painful position for us. But this certainly does not mean that we have given up all hopes of securing our real status. It is impossible for us to remain long in this position. I hope our Union will exercise its influence over the Princes, their ministers and the governments to see that the representatives of the people have equal share in the internal administration of the States. And if for certain technical reasons or legal complications this cannot be done, I hope we shall try to settle the matter by negotiation. However, if our negotiations with the Princes fail to secure an amicable settlement, after 15th of August the Rulers and the States people will stand in opposition to each other.

*[English translation of Hindustani speech.

The people have strength enough to settle their own affairs. We are grateful for the sympathy shown to us. But at the same time I wish to say that our attitude would not seriously affect the federal subjects. It might affect the Union which would consider its own interests. Such is our hope. With these words, I support the original resolution.]*

Mr. S. V. Krishnamurthy Rao (Mysore State): Mr. President, Sir, I had myself brought an amendment that in these matters the representatives of the people in the States, may have a voice but I withdrew that amendment because an amendment by Sir N. Gopalaswamy Ayyangar was accepted by the Ministers of the States. In this I see the dawn of a new era in the States. I hope the Ministers have accepted this amendment with all the implications behind it. We, the peoples' representatives from the States, are in a very delicate position. On the one hand we do not want to take any attitude which will jeopardise the Union of India. Unity is the prime need of the hour. On the other hand, we have to safeguard the interests of the people of the States. With this view, we have accepted the amendment of Sir N. Gopalaswamy Ayyangar. By the acceptance of the amendment, Sir, we believe that even in the States, minimum standards of democratic Governments will be established ere long, because the acceptance of this amendment in the Union Federation means the acceptance of the adult suffrage for the election of the representatives to the Federal Assembly and also the acceptance of the Citizenship Rights and the Fundamental Rights. I am sure the acceptance of these fundamental principles will have its own repercussions on the administration in the States. With this hope in view that ere long the Ministers who are charged with the heavy responsibility, will do their duty not only to their Rulers but also to the Union Federation and the people of the States, and will see that responsible Government will be established in the territories of the states, with this hope, I support the Resolution as amended.

Diwan Bahadur Sir A. Ramaswami Mudaliar (Mysore State): Mr. President, I have only a few words to address this august Assembly on this very important subject. Some of the States' Representatives—I use the word 'Representatives with some hesitation,—the Official Ministers of the States as they have been described,—have given notice of an amendment which tries to incorporate Section 125 of the Government of India Act. That Act suggested that the executive power of the Federation will be carried out by the States and the Rulers of the States through their own Officers and that the Federation should be content to have what may be called the right of inspection to see that that authority was properly exercised. There are a great many States where even now, whatever is required on behalf of the Federation or the Government of India, the work is carried out essentially by the State Governments and the executive authority of the States. During the years when the Government of India Act was under consideration at various Sessions of the Round Table Conference it was pointed out that while the States which acceded to the Federation would have no objection to legislation

*[English translation of Hindustani speech

[Diwan Bahadur Sir A. Ramaswami Mudaliar]

being passed on the ceded subjects by the Federal Legislature, the power of executive authority should still rest in the Officers of the State. That is to say, that the Federation shall have legislative authority alone, but that for the administration of those subjects which States had ceded, the administrative authority, the executive responsibility may still vest in the States. This was the position taken up as far back as 1930. Things have marched very far in some of the States during the intervening period and there are indications that in many States things will march further still in the direction of a closer association of the people of the States in the administration of the States. There is no doubt whatsoever that the trend of events, the march of public opinion, the awakening in the States themselves and the very fact that the States may accede to the Union and send their representatives to the Union Legislature, all these facts will tend to quicken the progress and the process of the greater association of the people of the State in the administration of the State. (*Cheers.*) I do not want to refer to any individual State, but I had in mind States which very shortly will give such an amount of power to the subjects of the States that there will be very little feeling in the matter in those States, at any rate. Even in 1930-31 those who represented the States in the Round Table Conference took the view that while the legislative power may be readily conceded to the Federal Parliament, the executive power must vest in the States to be exercised by the officers of the State. I venture to think—it is not a proposition that I am putting forward on behalf of any bureaucratic or undemocratic administrator of a State, but it is a proposition which may very well be put forward on behalf of the subjects themselves—that the executive authority in those States must vest in the authorities or the officers of the State. While that executive authority is to be imposed by a Federation through its own officers, who is it that will lose the exercise of that authority, except the very subjects who through their responsible representatives will be in charge now to a certain extent, and hereafter to a much greater extent, for the affairs of the State? If, therefore, the Federation intervenes with its own executive set-up in the administration of a State, I venture to think it is not the Ruler who is going to lose much or anything at all; it is those representatives, those popular representatives as they are called, those who will be in charge of administration by closer association of the people in the administration, it is they who will forego the right of exercising their authorities in those States. It may be said that in provinces to a certain extent federal jurisdiction is exercised by federal executive authority. But I believe the Union Constitution Committee and those who have taken part in these proceedings have realised that there is a fundamental distinction between Provinces and States. I do not know whether Provinces are altogether too happy or will be happy over the decisions that have been so far taken with reference to the powers of the Federation in the Provinces. The list of subjects,—Provincial and the Concurrent List—have still to be examined by this House. What the fate of that examination will

be I do not venture to say. But after all, Sir, I have not always been associated with States—my association has been of very recent times—and for years—30 years of my public life have been spent in what till the 15th of August may be described as British Indian Provinces. I venture to express the view that there is a very strong urge in the Provinces that as far as possible, what has been the subject of our agitation for decades, namely, provincial autonomy, should be a very real thing indeed. Provinces are not likely to easily yield to the suggestion that a strong Central Government means a Central Government with a vast number of subjects to administer. My own view of a strong Central Government is not that. For what purpose should a Government be strong in the Centre? I venture to think that if that position is clearly and analytically examined, you will come to the view that for certain subjects and with reference to certain powers, the Central Government—the Federal Government—should have ample plenary and exhaustive powers, but that does not mean that, taking a subject like even patents or copyrights, a strong Central Government is created by vesting the rights over patents or copyrights in that Centre. It may be for other reasons, that it may be desirable. It may be done by co-operation, by co-ordination, by the idea of the agency that is established at the Centre which will have, if not the power, at least to a certain extent, the advisory capacity to bring about that co-ordination, but let us not, because we think in terms of a strong Central Government, forget the fact that strength does not lie in expansiveness, in a wide variety of subjects coming under the scope of the Central Government. In fact, my own view is that the more subjects you bring under the Federation, the weaker you make it. So I would press very strongly when the time comes—if I may be permitted for a moment to say on behalf of the Provinces, forgetting my new *avathar* —I would press very strongly in favour of provincial administration having the widest possible power in consonance with the strength of the Central Government. There are occasions, of course, when an emergency arises when I would be willing to have the Federal Government over-run the whole of the sphere of the Federation. When an emergency is declared or proved to exist, then all these restrictions which we had even under the Government of India Act may well disappear and the Central Government may have all these powers; but normally, in day to day administration, in the absence of such an emergency, I venture very strongly, very respectfully and with great humbleness to urge that Provinces should have as much and as wide powers as possible. If that is the case, Mr. President, *a fortiori*, the States should have even wider powers and except for those subjects that they accede there ought not to be any interference in the States and so far as this power of administration is concerned, I venture to state that States may be left to administer their own subjects. I understand that there may be some difficulties in some areas, some States, to confer the power on them to administer these subjects. I understand that the amendment of my Honourable friend Sir N. Gopalaswamy Ayyangar wants to preserve that position

[Diwan Bahadur Sir A. Ramaswami Mudaliar]

and to take care of that situation. It may be so. It is from that point of view that we have not pressed the amendment which goes the whole way before this House at present. But barring such exceptions, the general rule shall be and must be that the States which can administer properly, which have an administrator, whether popularly elected or unpopularly based, who carried on the administration on correct administrative principles, those States cannot and should not have their administrative sphere encroached upon by the Federal Government. I think some of the States at least can show a record of administration which is—in the presence of such a large number of provincial representatives and provincial ministers, I dare not say what otherwise I would have liked to say—which is at least not less efficient than the administration in the provinces. With that record, I venture to think that it will be accepted by everybody in this House that as far as possible, in as many States as possible where there is no question of the administrative machinery not rising to the occasion, that administration shall be that of the State itself. I therefore want to make the position perfectly clear that in accepting the amendment of Sir N. Gopalaswamy Ayyangar we are not giving up the essential principle that it shall be the rule that States shall have their own executive authority and that in special cases exceptions may be made.

Sir Alladi Krishnaswami Ayyar: Sir, I had no idea of speaking on this Resolution, especially after an agreement had been reached between the Mover of the Resolution and certain representatives of the States. In dealing with this subject, it is unnecessary for me to go into the question as to the relative sphere of the Federation or of the Provinces in the Federal structure. I may have a good deal to say in favour of what Sir Ramaswamy Mudaliar has stated, namely, that the strength of the Centre does not depend upon the number of subjects assigned to it but upon the nation-building and nation-preserving subjects being in the hands of the Centre and the Centre being necessarily equipped with the machinery for enforcing its power throughout the area. But that is entirely irrelevant in the consideration of the question now before the House. The essential principle underlying the previous clause is that the executive power must be co-extensive with the legislative power. If the Federation has the power to pass certain laws it must have the necessary power to enforce those laws throughout the Federation. That is the common-sense, accepted constitutional principle to which no exception can be taken either by State protagonists or provincial protagonists.

The second question is, how is this executive power to be exercised? It may be exercised through the instrumentality or agency directly appointed by the Federation, or it may, for the time-being, employ a State or provincial agency. But the ultimate power and responsibility must rest with the Federation which must be satisfied that an efficient administration is carried on. If an efficient administration is carried on in State A, or State B or State C, very well. The Federation will

not interfere. But the Federation is the sole judge and the only judge of the efficiency of the administration throughout the Union, and every State agency and every Provincial Agency and every other agency must be the agency of the Federation to that extent. The object of this amendment is very simple. If the State machinery is functioning property, then you need not interfere; let the *statusquo* continue But the ultimate power will rest with the Federation, that is the principle to which we are committed. But that does not mean that the Federation or the Federal executive will go on experimenting. Why should it? For example, if the postal service or some other service is efficiently and properly conducted by the State agency, then the Federation will not have any need or business to interfere. If on the other hand, the State agency does not carry on the administration properly, the final authority must rest with the Federation. That is the principle of this amendment and I do not think that any State can take exception to it. It is really a mid-way solution between two extreme views. One view is that here and now the Federation must start off with a special agency for the purpose of carrying on this work. That is one extreme view. The other view is that the existing state of things must continue, especially when they are satisfactory. The view taken in this clause is that if and when the agency is found to be ineffective by the Federal authority, it will be up to the Federal authority—and they are the sole judges of the situation,—to interfere. Let there be no misunderstanding on this point. The principle of Section 125 of the Government of India Act is expressly departed from in this Constitution. It is not a question of parleying between the States and the Federal authority. It is a question of the responsibility of the Federation. It is but a matter of prudence. It is a matter of giving stability to the administration. When the administration of a particular subject is efficient through the State agency, that agency may continue to be employed. But there is no denying the fact that so far as the principle of this clause and the earlier clause is concerned, the ultimate responsibility for the proper execution of the laws which the Federation is passing is with the Federation and Federation alone and the principle that the executive power is co-extensive, in general, with the legislative power is not to be departed from. It is on that ground, Sir, that I support the amendment moved by Sir N. Gopalaswami Ayyangar with the modification, and on no other ground.

Sri K. Santhanam: Sir, I am glad that Sir Alladi has explanied the fundamental principle of the federal system so clearly and emphatically. I shall not try to cover the same ground. But there is one point mentioned by Sir Ramaswami Mudaliar which also requires our attention. He suggested that as the States are getting democratised it may not be so objectionable to leave in their hands the executive authority on federal subjects. Sir, I do not think this is correct. To the extent the States get more and more democra-

[Sri K. Santhanam]

tised, the distinction between the Provincial and Federal subjects must become clearer and clearer. That is my view. When a Ruler or his Dewan defies the Federation it may be easy to deal with him because the Federal authority will get the support of the people. But if the Federal subjects are under democratic States then the people themselves may get a vested interest and they may defy the Federal authority. Therefore, in all federal schemes, as far as possible, the powers of the Federation and the powers of the units are kept distinct. The executive authority of the Federation is emphasised in all Federal subjects and the autonomous units have the executive authority only in their own subjects. This distinction is carried to such an extent in the United States of America that even in the matter of courts the Federal Laws are enforced by the Federal Judiciary and the State Laws are enforced by the State Judiciary. In course of time, the Indian Federation also will have to follow the same principle. I agree with Sir Ramaswamy Mudaliar that the strength of the Federation does not depend upon the number of subjects it administers. The Indian Federation may have only a handful of subjects—four or five. But so long as it has absolute and undivided authority over those subjects, it is bound to be strong. I am sorry Sir Ramaswamy Mudaliar brought in these issues, particularly the issue as to what constitutes the strength of the Federation. What should be the scope of the Federal subjects and what the scope of the Provincial subjects is an entirely different issue on which many of us will go a long way to agree with him. But this particular clause has nothing to do with it. Assuming that we define the Federal subjects, to what extent should Federal authority extend over these subjects? That is the issue of this clause. Sir Alladi has, of course, stated and explained the general principle. I say that to leave the Federal authority in the hands of the States will be even more dangerous when they become democratised. There may be conflicts between all-India patriotism and unit patriotism, and local conflicts can be dangerous. The Provincial authority may set in motion disintegrating forces which we should seek to avoid even from the very beginning. Therefore, let us make it quite clear that it shall be open to the Federation to take the executive authority in all Federal subjects whenever it chooses to do so. For the present, it may be left in the hands of the State, but the power to resume it, whenever the Federation may think fit, should be with the Federation. The argument that more and more the authority in the States will be with the people, has no relevance whatsoever. In fact, it operates against leaving the authority in the hands of the States. Therefore, let us have the Federal authority intact for the Federation. I suggest that, when the final draft comes, there should be no doubt left as to the power of the Federal authorities to resume their executive functions in Federal subjects as they have been defined in the list.

Shri Gopikrishna Vijayvargiya (Gwalior State): *[Mr. President, Sir, I come from an Indian state. The motive in my mind is that our

*[English translation of Hindustani speech.

country should have a strong Centre. Unfortunately our country consists of many parts. In some Indian States and in districts and provinces too, in a wave of local patriotism people wish to possess more 'autonomy'. This will make our country weak and our Centre will not remain strong.

I wish to tell you that we all, and the States also, shall have to surrender (rights) so as to invest the Centre with the maximum power, to make it and the country strong. Under the present circumstances, the scope of executive functions in states should not be enlarged. As suggested by Sir Mudaliar the mere number of Federal subjects, by themselves are not enough to create a strong Centre. This is correct but some subjects have to be assigned to the Centre and the ultimate authority about them should not be left to the discretion of the States.

The central affairs of the States and provinces should be entrusted to the Centre. The minimum possible executive power should be with the States and provinces. It is not proper to keep the maximum power with them. In small countries like Switzerland and others, the executive authority is left with the units, but in India we cannot do so, as that would not be free from risks. Therefore excessive powers should not be handed over to the States. The federal authority in the States should as far as possible be exercised through a federal machinery. But as suggested by Sir Gopalaswami Iyengar, in the beginning it is not necessary to add a provision to this clause. We would not object to it. But I think it proper to create a strong Centre in the country and the States should not grudge it. If we want to make the Centre strong, we shall have to hand over at least some subjects to the Centre. Without it our country cannot progress. Hence it is in the hands of the States and the provinces that if they intend having a strong Centre, they should confer upon the Centre the maximum power. We must make our Centre strong and along with this the powers of direction and inspection should vest in the Federation. The States should not seek to possess as much power as possible. Therefore, at present I do not oppose it. As it is, the amendment of Sir Gopalaswami Ayyangar should be accepted but this should be our aim, that the Centre be made as strong as possible.]*

Mr. R. K. Sidhwa: After Sir Gopalaswami Ayyangar's speech it was very good of Sir Alladi to have made the position very clear as to what the object of this resolution is. He has in unmistakable terms stated that the final authority shall vest in the Federation : Sir, we congratulate the States' representatives who have been good enough to participate in this Constituent Assembly and I also congratulate those of the States who have given a lead in this matter and made it clear for others to enter it. I also desire to tell them that while one part of the country is becoming democratic, the other part of nearly ten crores of people cannot remain under autocratic rule. It has been a principle with us and we have declared that when India becomes free we shall see to it that our States' brethren also become

*[English translation of Hindustani speech.

[Mr. R. K. Sidhwa]

free. Therefore in this august Assembly, when we have all met together—and I am very glad that it is so—the Rulers, their representatives and the peoples of the States,—that we should tell them that was our object and desire. I am very glad that some of the Rulers do feel that they cannot expect one part to rule autocratically and the other to rule democratically. I do not want to go into the details of various States but I know of some States where there are no local bodies, no municipalities, and where there are Legislative Assemblies there is a majority of nominated members. Days of nomination are gone. There should be all elected representatives both in the municipalities and the legislatures. The nomination period has gone, and if you want to make it democratic, abolish all these nominations. I would suggest to the Rulers that they must have elected Legislative Assembly members with powers to function as it will be in the provincial legislatures. Please also see that elected member, local bodies and municipalities are also established where they do not exist. I know of a State where a printing press is not allowed to be established. I do not want to mention the name of that State. It is a fairly big State. I do not want to record a discordant note on this. Our spirit is equally good but we want to tell the Rulers today that the time has come when we have to implement the pledge given to the States people. We have been telling them "when the time comes to obtain our freedom we shall see to it that you also shall get it," and I therefore take this opportunity of telling the people of the States that we shall strain every nerve and see that the people of the States are also ruled exactly in the manner we rule in India.

Mr. M. S. Aney (Deccan States): Mr. President, Sir, the amendment under discussion is a compromise arrived at between the Ministers of some of the important States who are fortunately present here and who have joined the Constituent Assembly to help us and the spokesmen of non-official members of the Constituent Assembly representing British India. Therefore, the proper persons to explain the implications of this compromise are those who are parties to that compromise. We have yet to hear what Sir Gopalaswami Ayyangar has to say. But one of the important members of the ministerial party, Sir Ramaswami Mudaliar, has made a speech and tried to explain the point of view which he had in mind in accepting the compromise which is embodied in this amendment. I only want to make a general observation and not any specific suggestion. The point of view is perfectly clear to my mind that as a general rule the executive authority of a State shall be continued to be exercised by the ruler in respect of federal subjects. There is a warning however to the States in the clause that a certain standard of administration is demanded of them. I believe at present, at least, the Assembly is in this mood. It does not want the Federal authority to exercise its powers to bring about a change in the administration of the States. It expects that the force of great events and the circumstances which we have to face, will have the desired effect upon the psychology of those who have to administer the States. The signs of progress are already there. It

has begun, and we hope it will continue uninterrupted for some time. We have come to a compromise and let us for the time being rest our faith in that hope. We can tell them that if the time comes the Federal authority will not be wanting in exercising its powers in cases where it may become necessary in course of time. I think the wording is sufficiently clear. Those who have got the interest of the country at heart will easily understand the importance of mutual responsibility and obligations that the Federal authority and the States have to bear in mind. We want to make a strong India, by encouraging the States to take part in the Union and by bringing about concord between the Union and the States. Our attempt should be to bring about this desirable result *viz.* a strong India. That strength lies in the willing co-operation between the acceding States and the Federal authority. Therefore, the policy of the Federal authority will be to maintain the essential unity. The proper thing for the States to do is to enlist the sympathy of their people by associating them with the State administration and that too as quickly as possible.

With these few words I support the amendment.

Sir B. L. Mitter: Sir, it is somewhat surprising that an innocent and agreed amendment should have evoked so much eloquence and a certain amount of heat also. What are the implications of this amendment? There are two implications: one is that the amended clause postulates the supremacy of the Federation. The last words are: "until otherwise provided by the appropriate Federal authority in cases where it is considered necessary." This shows that the ultimate authority is the Federal authority. The first part which says "The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects" merely continues the *status quo*.

The constitution which we are framing in this Assembly is not an unreal thing. We have got to take the facts in the country as they are into consideration and in the light of those facts prepare an appropriate constitution, one of the facts being that in some of the major States some of the Central subjects are administered by the State authorities. It has not caused any embarrassment to anybody. It has not occasioned any inefficiency. Well, if that be so, that state of affairs will continue. If you find that there has been any abuse or inefficiency, there is power in the Federal legislature to make adequate provisions. This is a simple clause embodying two principles: first is supremacy of the Federal authority and second the continuance of the *status quo*.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, we have had a most interesting debate, if I may say so, on an issue which is certainly an important one, but an issue on which I thought those who took somewhat differing views had already come to an agreed settlement. I do not wish to add to the eloquence that has been spent upon this issue in the last one hour and more. I wish only to say, Sir, that the basic principle of this clause is that the executive authority of the

[The Honourable Sir N. Gopalaswami Ayyangar]

Federation is co-extensive with its legislative authority, that, normally, it is the Federation that is responsible for the proper administration of Federal subjects. But we have taken the existing facts into consideration where a large number of Indian States are actually administering what will be Federal subjects in the new Constitution. We are providing that the existing state of things should continue, but that that continuance is necessarily subject to the overriding control of the Federation itself, whenever it chooses to impose that control. We cannot get away from that position. As Sir B. L. Mitter pointed out, the supreme authority in regard to the executive administration of the Federal subjects is vested in the Federation. I should reverse the position that Sir Ramaswami Mudaliar contended for. He seemed to think that the general principle should be that the executive authority in relation to Federal subjects should vest in the States, but that, as an exceptional measure, the Federation should take over the administration into its hands whenever that becomes necessary. What I wish to point out is that the general principle should be that it is the Federation that is responsible for the executive administration of Federal subjects, but that it will not, unless it considers it necessary, interfere with the State administration of Federal subjects where it is in existence today and where it is efficient according to proper standards.

Now, it was said by the mover of one amendment that the taking over of executive administration in respect of the States should be done by Federal law and not by any kind of Federal authority as indicated in the Clause. I would only mention to him one range of subjects, *viz.*, External Affairs. A very large portion of the field of External Affairs is covered not so much by legislation as by executive action. In such cases it would be absolutely unnecessary for us to look to a Federal law for the purpose of the executive administration of External Affairs being carried out in the proper way within the limits of Indian States.

So far as this particular matter is concerned, Sir, I consider that in regard to the executive administration of Federal subjects there is no fundamental distinction, as was pointed out by Sir Ramaswami Mudaliar, between the Provinces and the States. The only distinction is that the States are actually administering some Federal subjects while the Provinces are not doing so. But, so far as the right to administer them is concerned, I do not think there is any distinction between the Provinces and the States. Now, what really distinguishes the Provinces and the States is only that different kinds of internal administration exist in the two areas, I do not wish to go into this wider field which some of the speakers have covered; but I do wish to endorse and emphasise one point which was, I think, made by Mr. Santhanam and that is this: The need for the taking over of the executive administration of Federal subjects by the Federation will not be less, but perhaps will be greater when democratic institutions become more common in the States than they are today. After all we have got to consider that the principle of a Federal system is to divide the administration or the exercise of Sovereign powers between the

Centre and the Units. And I do not see why any hesitation should be felt with regard to accepting this position, because after all the federation is as much a part of the constitution which the people and the rulers of the States have to reckon with as the State constitution will be. In the federal legislature the States will be adequately represented, and when, for example, a federal law is passed providing for direct administration of federal subjects by the federation, that law will be one in the passing of which the representatives of the States have had a voice, and therefore I could see no real principle involved in contending that you must reverse the general principle in the States from what it has to be in the provinces. I do not wish to say more, Sir, on a subject on which there is agreement as to what we actually should do. I think the House is generally in favour of accepting the amendment that I have moved. I wish to say nothing more.

Mr. President: I will now put the amendments to the vote. The first is an addition of four or five words to the clause which Sir Gopalaswami himself proposed, that at the end of Clause 9 the following be added:

"in cases where it is considered necessary."

I take it that the House accepts that.

The motion was adopted.

Mr. President: There are other amendments which have been moved. The amendment of Mr. Chandrasekharaiah that for Clause 9 the following be substituted:

"The executive authority of the ruler of a federated State shall continue to be exercisable in the State with respect to federal subjects subject to inspection of and the directions from the head of the federal executive."

The motion was negatived.

Mr. President: Then the other amendment by Mr. Himmatsingh Maheswari is that for Clause 9 the following be substituted:

"The executive authority of the Ruler of a Federated State shall, notwithstanding anything in this Constitution, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has powers to make laws for that State, except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law."

The motion was negatived.

Mr. President: Then I will put the original proposition, as amended by Sir Gopalaswami, to vote.

Clause 9, as amended was adopted.

Mr. President: Honourable Members will remember that Mr. Sri Prakasa moved a resolution in the earlier part of the day which was referred to a committee of three members of the House, for redrafting and submission before the House. That is now ready. If Honourable Members like to pass it today. . . .

Many Honourable Members: Yes.

Shri Sri Prakasa: Sir, I move that:

"Notwithstanding anything contained in the Rules of the Constituent Assembly in regard to its composition, methods of election, and termination of membership, all elections which have been, or may be, duly held in pursuance of His Majesty's Govenment's statement of June 3, 1947, shall be deemed to be valid, and the Assembly so constituted shall be deemed to be, and always to have been, validly constituted, and all proceedings hitherto had, shall be deemed to be valid."

Sir, I move.

Mr. H. V. Kamath (C. P. & Berar: General): Sir, may I suggest that Clause 68 of the Rules of Procedure of the Constituent Assembly makes provision for removing any difficulties that may arise? It empowers the President.....

Mr. President: The proposition has been placed before the House to remove the difficulties that have been noticed. Does anyone want to say anything about this?

(No member rose).

Then I will put the proposition to the vote.

The motion was adopted.

Mr. President: The House is adjourned till Monday at 10 O'clock.

The Assembly then adjourned till Ten of the Clock, on Monday the 28th July 1947.

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28th July
1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 28th July 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. Pandit Chaturbhuj Pathak (Central India States Group).
2. Major Maharaj Kumar Pushpendra Singhji (Central India States Group).
3. Sir Jwala Prasad Srivastava (United Provinces: General).

ELECTION OF MEMBERS TO THE STEERING COMMITTEE

Mr. President: Members will recollect that there were two Members to be elected to the Steering Committee. I have pleasure in declaring Mr. Ramchandra Manohar Nalavade and Mr. Suresh Chandra Majumdar duly elected as Members of the Steering Committee, they being the only names whose nominations were received for the two vacancies.

REPORT OF THE UNION CONSTITUTION COMMITTEE

Mr. President: We shall now proceed to the consideration of the clauses of the report of the Union Constitution. The held-over clause is Clause 8.

Mr. H. V. Kamath (C. P. and Berar: General): Before we proceed to the day's business, I have a little request to make. May I do so? Will you be so good as to direct that our National Flag be presented to every Member of this august Assembly, who will treasure and cherish it as a worthy memento of the historic occasion on which it was adopted unanimously and with acclamation by this House, the occasion on which a great new Free State was born?

Mr. President: That is a matter which will require a little consideration and after consulting the Steering Committee, I will make an announcement later.

Mr. Tajamul Husain (Bihar: Muslim): May I know, Sir, if this Session is going to end on the 1st of August? The information is necessary because we have to book our seats previously.

Mr. President: I have been considering the matter this morning. We have been going on slowly with the consideration of the clauses. At the rate at which we have been going, I do not know whether we shall be able to finish the consideration of all the clauses before the 31st. I am anxious myself that this Session should end by the 31st, so that the Members might go and return again on the 15th of August, when they have to return here and we may have another short session after that for considering the report of the Union Powers Committee and the Advisory Committee and certain other

[Mr. President]

matters. So far as I am at present advised, I think we shall end this Session on the 31st but I am hoping that the Members will bear that in mind and will cut down the discussions as far as possible consistently with efficiency of the discussion and complete the consideration of this Report by the 31st. We have still four days for that purpose.

Mr. Tajamul Husain: May I know one thing? Do we understand that this Session will end on the 31st whether the Union Committee Report is finished or not, as we have to book our berths beforehand? It will be better to definitely fix a date whether the work is finished or not.

Mr. President: As I have already stated, as at present advised, 31st is going to be the last day of the session.

We held over discussion of two Clauses 7 and 8. Shall we take them up now?

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): We can now take up Clause 8-A that was moved by Sir Alladi Krishnaswami Ayyar, which was held over for discussion.

Mr. President: I think we have passed Clause 8. We shall take up Clause 8-A which was moved by Sir Alladi Krishnaswami Ayyar. I do not know if members have got that before them. I shall read it out:

"That after Clause 8 the following new clause be inserted:

'8-A. (1) The Government of the Federation, may, by agreement with any acceding Indian State but subject to the provisions of the Constitution in regard to the relationship between the Indian Federation and an acceding Indian State, undertake any legislative, executive or judicial functions in that State.

(2) Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to and governed by any Act relating to the exercise of foreign jurisdiction by the Parliament of the Federation.

(3) If any such agreement covers any of the matters included in an agreement between a Province and a State under Clause 8 of the Provincial constitution, the latter shall stand rescinded and revoked.

(4) On an agreement as per the provisions of sub-clause (1) being concluded, the Federation may, subject to the terms of the agreement, exercise the legislative, executive or judicial functions specified therein through appropriate authorities'."

If any member wishes to say anything about this clause, he may do so now.

I will just see if there are any amendments to Clause 8-A.

Mr. B. M. Gupte (Bombay: General): A verbal amendment, Sir:

"That in item No. 5 of Supplementary List I, dated 24-7-47, in sub-clause (3) of the proposed clause 8-A, after the words 'the latter' the words 'to the extent it is covered by the agreement with the Federation' be inserted."

Sir Alladi Krishnaswami Ayyar (Madras: General): I accept the amendment.

Mr. President: Does any one else wish to say anything about it?

(None rose to speak.)

I will now put the amendment to the amendment to vote. It has been accepted by Sir Alladi.

"That in item No. 5 of Supplementary List I, dated 24-7-47, in sub-clause (3) of the proposed clause 8-A, after the words 'the latter' the words 'to the extent it is covered by the agreement with the Federation' be inserted."

The amendment was adopted.

Mr. President: I now put the clause as amended.

Clause 8-A, as amended, was adopted.

Mr. President: We now go to Clause 10.

CLAUSE 10

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): This is a very simple clause, Sir:

"10. There shall be a council of ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions."

I beg to move this.

Mr. President: There are a number of amendments of which I have got notice. Mr. Pocker Sahib Bahadur.

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): He has left and he has authorised me and one or two other members to move his amendments.

Mr. President: Mr. Ahmed Ibrahim Sahib Bahadur.

Haji Abdul Sathar Haji Ishaq Sait: Both of them have left. I do not know whether you can permit me to move it.

Mr. President: Any other member can move it. You desire to move it?

Haji Abdul Sathar Haji Ishaq Sait: I move:

"That for clause 10 the following be substituted:

'10. There shall be a Council of Ministers elected by the National Assembly by a system of proportional representation by single transferable vote and the council of ministers shall be responsible to the National Assembly'."

I do not think, Sir, any elaborate speech is required on this. The amendment is very simple and clear and I hope this will be accepted by the House. I move.

(Amendments Nos. 213 to 217 were not moved.)

Shri H. V. Pataskar (Bombay: General): I have given notice of this amendment in order to make it clear that the principle of collective responsibility will be applicable to the council of ministers to be appointed under this clause. As Sir N. Gopalaswami Ayyangar has given notice of another similar amendment in the supplementary list, I do not propose to move this amendment (No. 218).

Pandit Thakur Das Bhargava (East Punjab: General): *[Mr. President, Sir. The amendment which I want to move is this:

"That the following be added at the end of Clause 10:

"The Prime Minister shall select the other Ministers and the whole ministry shall be responsible to the legislature and act on the principle of joint responsibility in the discharge of the duties of the Ministry.' "

*[English translation of Hindustani speech.

[Pandit Thakur Das Bhargava]

I need not remind members that it has been laid down in the objectives Resolution that a democratic form of Government shall be established in the Indian Union. The question now is whether the democratic government should be of the Ministerial type or of the Presidential type as is the case in the U.S.A. So far as the provincial constitutions are concerned we have accepted the principle that responsible democratic government should be established except as regards a minor point about the powers of the government. The principle to be followed in the Union Government should be that the Prime Minister should be the pivot of the whole administration. He should have full powers, and the President would be merely a constitutional head; and he should be given no individual powers or discretion. Whatever the President will do should be on the advice of his ministers. This is a good principle and for this, the British model is regarded as an example by the whole world. This is a model of executive powers which leads to the good and welfare of the people. After great deliberation and mature consideration, the Union Powers Committee did not adopt the Presidential constitution of the U.S.A. For this reason, this amendment is based on the British model, though the House is already committed to it. Even then, it should be clearly stated in the Union Constitution that the voice of the Prime Minister would be the final voice, and the President will merely echo it. On no occasion shall the voice of the Premier be flouted. Secondly, the Prime Minister should have the right to choose his cabinet colleagues, and the principle of collective responsibility should be adhered to.

I need not emphasise this any more; I would like to say in the end that these three basic amendments, which are based on democratic principle, may be accepted by the House.]*

Mr. H. V. Kamath: Sir, my amendment is covered by the amendment of Pandit Thakur Das Bhargava. So I do not propose to move my amendment.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. President, Sir, my amendment is:

"That the following be added at the end of clause 10:

'That the Executive of the Union shall be non-parliamentary, in the sense that it shall not be removable before the term of the Legislature and a member of the Cabinet or the Cabinets may be removed at any time on impeachment before a judicial tribunal on the ground of corruption or treason.

The Prime Minister shall be elected by the whole House by single transferable vote. Other Ministers in the cabinet shall be elected by single non-transferable vote'."

Sir, there was a discussion at the time of the passing of the recommendations of the Provincial Committee regarding this issue but that decision is not binding when we are considering the Union Constitu-

]* English translation of Hindustani speech.

tion. My submission is that the parliamentary system which is functioning in India under the 1935 Act has miserably failed as far as the Local Self-Government, Local Boards or Municipalities are concerned. All over India you must have noticed that there have been deadlocks and as the worthy leader of the Muslim League said, it does not suit the genius of the people. As far as the Provincial Assemblies are concerned, there was success to some extent because the Congress was fighting the British Imperialism and all conflicting elements were reconciled on that issue. The Muslim League had an ideal of Pakistan and the majority of Muslim members were elected on the Muslim League ticket but with the disappearance of British Imperialism, with the disappearance of the programme of liberating the Indian people, and with the attainment of Pakistan there will be a plethora of parties and groups. There might be communists, socialists, Muslim Leaguers and many others. To expect such a large majority as we had in the past will be an impossibility. There will be many groups and to expect that there will be a very solid and absolute stability for the Government will be a myth. We have seen in the past that in the working of the Provincial Constitution in the Provinces the Opposition was neglected, ignored and sometimes punished. We have also seen that the parliamentary system which is existing at present created favouritism and nepotism in regard to those people who were supporting the Ministry. The Ministers were serving the members of the party more than the people. A Minister was not a humble servant of the Nation but he was a humble servant of those who were supporting him in the Cabinet and therefore I say that this scheme has not worked well in the past. At a time when India is attaining the cherished goal of independence, what do we find around us—arson, killing and looting. Why, because there is weak executive manned by Ministers who depend for their existence on the support of those people who are interested in communal tension. Everybody is not Pandit Jawaharlal Nehru. Pandit Jawaharlal Nehru when he went to Bihār, announced that people would be bombed if they continued the rioting but there was not a single minister, either Muslim or Hindu in the whole of India who took this attitude. Diamonds are rare, stones are numerous. What we want to-day is a stable Government. What we want to-day is a patriotic Government. What we want to-day is a strong Government; an impartial and unbending executive, that does not bow before popular whims. To-day there are weak and vacillating executives in all Provinces who are amenable to influence of the members of the Party and it is impossible for them to displease if they want to continue in the seats that they occupy. Now it is said that the parliamentary system of Government is democratic. America is a democratic country and the Constitution that is prevailing there is also democratic. We find that there is a non-parliamentary executive and the whole administration of the country is divided into 3 parts, one is the Judiciary, the other is the Executive and the third is the Legislature. It is impossible for the Executive to defy the policies laid down by the Legislature and there is the Judiciary to check the

[Kazi Syed Karimuddin]

excesses of the Executive. Under the circumstances when there is communal tension everywhere, and when there are disruptive forces in this country, there is no other go except to have an Executive which is non-removable by the vote of the legislature. The other day when an amendment was moved at the time of the consideration of the Provincial Constitution, Dr. Pattabhi wanted to explain from a higher plane, although he was speaking under impulse, that the non-parliamentary executive was not suited to the conditions of India. Instead of that he argued about the separate electorates in India. He argued about the Communal Award which was beside the point. There is no communal question in America and in spite of that, this non-parliamentary executive has been adopted there. This is a country of different religions. This is a country of different ideologies. This is a country with different cultures. At a critical moment in the history of India when we do not want internal strife, when we want a formidable Government to be a bulwark against all aggression, it is necessary that in the interim period at least there should be a non-removable executive and non-parliamentary executive. The salvation of Indian people lies in this. There will be neither any favouritism nor nepotism and I plead with the House to accept my amendment.

Mr. D. H. Chandrasekharaiya (Mysore State): Mr President, Sir, my amendment is to the effect that "provision should be made to give adequate representation to the States in the Council of Ministers". Beyond suggesting that the point raised in this amendment be kindly kept in view at the time when the Ministry is actually formed, I do not propose to press it.

Mr. President: Mr. Gokulbhai Bhatt.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States Group): *[Sir, Clause 10 lays down that there will be a Council of Ministers and a Prime Minister. But it does not state how the Ministers will be selected or approved. Will the Cabinet Ministers be members of the Parliament? What clauses lay down that they will be members of the Parliament? What should be their salary? Can any changes be made in it? There is no mention of this anywhere. I want to emphasise that it would be better to make all this clear here, as we have done in the draft constitution for the provinces. But our constitutional experts and people more conversant with law than myself say that this is a matter regarding the Union, the Centre, and that it is no use dilating on it because when the final draft will be prepared, the matter will be considered and everything will be clear. I think that it is very necessary to mention as to how the Cabinet will be formed. But we have been assured that all this will be in accordance with what has been laid down in the provincial constitution. With this hope and also in view of the opinion and advice that this amendment should not be moved, I do not want to place it before the House.]*

The Honourable Sir N. Gopalaswami Ayyangar: Sir, as the clause now stands in the draft, it does not say anything about the

*[ ]*English translation of Hindustani speech.

manner in which the Council of Ministers is to be chosen and the responsibility of that Council to the Legislature. A number of amendments have been tabled on this aspect of the matter and in order to cover the essentials in respect of these matters, I have given notice of this amendment, that at the end of Clause 10 the following be added:

"The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. The Council shall be collectively responsible to the House of the People."

Very few words are required from me to explain the content of this amendment. The Prime Minister is to be invited by the President to form a ministry and naturally by convention the President will invite the leader of the party which by itself or together with the support of other groups in the House is able to command a fairly stable majority. The other ministers will be chosen by the President on the advice of the Prime Minister. Provision is made for collective responsibility to the Lower House or the House of the People. Generally, the responsibility is only to that House, not to the Parliament as a whole. I notice that in one of the amendments it has been suggested that there should be both joint and several responsibility. I do not think in the case of a Government we need copy the practice which perhaps is common in the framing of ordinary private contracts between a Board of Directors possibly and other people. It is sufficient I think that we provide for the collective responsibility of the Council to the House of the People. Sir, I move.

Mr. President: These are the amendments of which I have notice. The clause as also the amendments are now open to discussion.

Mr. Tajamul Husain: Mr. President, Sir, Clause 10 says that there shall be a Council of Ministers with the Prime Minister as the Head to aid and advise the President in the exercise of his functions. Sir, there is no mention in this Clause as to how the Council of Ministers is to be created. Therefore I find, Sir, that an amendment has been moved to the effect that each Minister shall be elected by the Assembly by the principle of proportional representation by single transferable vote and the Council of Ministers shall be responsible to the Assembly. Now, Sir, we can safely divide this amendment into two parts; the first part is that the Ministers are to be elected by the Assembly; the second part is that the Cabinet of Ministers are to be responsible to the Assembly. As regards the second part, I entirely agree. If the Council of Ministers have no majority behind them in the Assembly they will not remain in office or if there is a vote of 'no confidence' against them, even then they will get out. Therefore this part of the amendment I can quite appreciate. But as regards the first part, namely, that the Ministers shall be elected by the Assembly, I am afraid, Sir, I have not been able to appreciate. If the Council of Ministers are to be elected by the members of the Assembly by proportional representation by means of the single transferable vote, then, Sir, what may happen? There may be a small party and if

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there is single transferable vote by proportional representation, that small party may succeed in electing a Minister. Now, Sir, that party may not have the same political view as the majority party in the Assembly. Therefore in a Cabinet there may be Ministers with two divergent views and opinions. Now, Sir, if that happens there will be no team work in the Ministry and this cannot be called a stable Ministry. After all we have seen that the English system in this connection has been tried for centuries in England and it has worked well. What happens in England? The leader is summoned by the Head of the State, *i.e.* the King and is appointed Chief Minister or Prime Minister. This Chief Minister or Prime Minister has to submit the names of the other Ministers and in consultation with the Prime Minister the Head of the State or the King appoints all the Ministers. Then, in that case the ministry is stable; for when the Prime Minister has got the majority in the House, he will carry on, and if he has not, he will not. But to have two different kinds of ministers in the same Cabinet, I am afraid, I am not able to appreciate.

Now, Sir, another amendment is to the effect that the Union Executive shall be non-Parliamentary and should be irremovable, and that a member of the Cabinet may be removed at any time on impeachment before a judicial tribunal on the ground of corruption, etc., and that the Prime Minister shall be elected by the whole House by single transferable vote, while the other Ministers shall be elected by single non-transferable vote.

Now, this amendment too can be safely divided into four parts. The first part is that the Cabinet should be non-parliamentary—should be irremovable. That is a thing which I cannot appreciate—the non-parliamentary complexion of the cabinet. It appears to me rather anti-democratic. If the cabinet does not carry the confidence of the House it must be removed. It cannot remain even for one minute, after it has lost the confidence of the House.

The second part is that the Ministers may be removed by impeachment before a judicial tribunal. I am afraid I am not able to appreciate that point also. If a Minister does not have the confidence of the House, and if there is something against him, he can be removed by bringing up the matter before the Legislature. Why drag him before a judicial tribunal? I do not know how this is going to work in a democratic system, such as the one we are hoping to have for our country.

And the third part is that the Prime Minister should be elected by the whole House by single transferable vote, but the other members of the cabinet are to be elected by single non-transferable vote. I am not able to understand what advantage the Honourable Mover expects under this arrangement. If the whole House elects a person, the man who has the larger majority will be elected. Suppose there is a House

of 150 and one party—I will not say the Congress or the League, because there will be no old Congress or old League in Hindustan, parties will be on different lines—that one party, say, the Socialists number 100 and the opposition number 50.

Kazi Syed Karimuddin: Sir, how does the Honourable Member know that there will be no League or Congress party?

Mr. Tajamul Husain: I am glad I have been asked that question. There should not be any such parties, Sir. The sole object of the Congress was to achieve complete independence, without the interference of a foreign power and it has succeeded. The Congress has achieved its object. The League's object was the partition of the country and have Pakistan and they have got that. Both the parties have achieved their respective objects and they have finished their work. What the Congress wanted, the Congress has achieved and what the League wanted, the League has achieved; now there is no difference at all between the two, we are all in India and are Indians but our rights must be protected.

Mr. President: The Honourable Member will please confine himself to the discussion of the point. The future of the Congress and of the League is not before the House for discussion.

Mr. Tajamul Husain: But the Honourable Mover had asked me to explain why I said there would be no League nor Congress Party as of old creeds and I thought I had your permission to explain; but now that I do not have it, I will not say anything more about that. I will only say that there will be no parties on the lines we have known them, because both the Congress and the League have achieved their objects. Both parties will have new creeds in future.

I was saying this. Suppose in a House of 150, one party has 100 members. That party will elect the leader who will be the Prime Minister. Suppose there are two candidates and the successful candidate gets 60 votes and the rest 40 oppose him. He still becomes Prime Minister. But what will happen if the opposition of 40 Members combine with the rest 50 in the House? Then the House will be divided as 90 against 60. The Leader cannot be chosen by the Party which has the largest majority in the House. It is just possible, in that case that the man who ultimately becomes the Prime Minister will be a man of the opposition. That is undemocratic and is against that system of democracy which I admire—the English system of democracy. I think that as far as possible, in order to suit our Indian ways, we should adopt as much of the English constitution as we can.

I oppose the amendment.

Lastly, there is the amendment moved by Sir N. Gopalaswami Ayyangar—which is also the same as that of Pandit Bhargava—providing for the selection of the ministers and the appointment of the Prime Minister. The Prime Minister, it says, should be appointed by the President who will appoint the other Ministers on the

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advice of the Prime Minister and the Cabinet shall be responsible to the whole House. That is the system which is prevalent in the House of Commons and I support this amendment. As I said, it has worked very well in England and there is no reason why it should not be equally successful in our country. I support the amendment of Pandit Bhargava also.

Mr. H. V. Kamath: Mr. President, Sir, this clause seeks to lay down the basis of our national federal executive. Two amendments have been moved to this clause, amendment No. 212 and amendment No. 221 which, in effect, seek to weaken this national executive. My friend Mr. Kazi and my friend Mr. Husain praised respectively the American model and the British model. Here Sir, we are not concerned with which model or which type we are going to embody in our constitution, whether it is the British, American, Russian, Turkish or the French or any other for the matter of that. Here, Sir, we are concerned with the principles of a democratic efficient and dynamic government. After all what is needed today is an efficient and dynamic government which will clear the mess that has been made in this country, which will lift this country of ours out of the rut into which it has fallen. The most elementary as well as the most fundamental principle, to my mind, of a democratic, efficient and dynamic government is that while every shade of political opinion and every school of thought should be adequately represented in every legislature,—because in a legislature two heads are better than one, twenty heads are better than two and two hundred heads are better than twenty—, in the case of the executive, specially when we are planning a dynamic executive, the reverse is the case. Here, Sir, in an executive it should be that twenty heads are better than two hundred, two heads are better than twenty and in an emergency even one head is better than two. In an emergency where prompt action and quick decision is needed, dynamism is required, one head is better than two heads. But these amendments seek to lay down a basis for the executive which if accepted would weaken the executive and would practically render it passive, unstable and static and render it unable to cope with the tasks that lie ahead of us. After all a cabinet or an executive is not a *Shivji ka Barat* or an assorted museum piece or a mere *Khichri*, but we want to make the executive a really dynamic executive. Here on the floor of the House my friend Mr. Kazi eulogised Pandit Nehru for what he had done in Bihar. I wish, Sir, that many of us were in a similar position to praise and eulogise the leaders of the Muslim League when similar and worse things happened in Bengal and some other parts of India. It is well known that when these outrages were committed in East Bengal and many other parts of India, when men were massacred, women were humiliated and children were burnt in fire and oil no leader of the Muslim League raised his little finger nor did even one Muslim League leader go into those parts and did what Pandit Nehru did in Bihar. Is this the way in which we are going to build up a strong united India? Is this the

spirit that is going to animate us in future? Only yesterday I read a statement from the head of the Muslim League where he mentioned Pakistan and Muslim India. I expected that at least after the division of India into Pakistan and India or Bharatvarsha on a communal basis the hatchet had been buried fathoms deep. But the same spirit is abroad and that spirit has not been stilled. People thought of Pakistan and the rest of India. . . . . .

Mr. President: The Honourable Member should confine himself to the subject under debate.

Mr. H. V. Kamath: I was trying to make out that today what is needed is a dynamic spirit of unity, of action, of sacrifice and of faith. Let us not forget the grand, beautiful vision painted by our poet, Viswakavi Rabindranath in words of matchless beauty. That vision should animate us and guide us in our future labours so that we can all build up a great India worthy of our past and worthy of the sacrifices which our martyrs have undergone. Permit me, Sir, to quote those words which picture a vision of matchless beauty:

> "Where the mind is without fear and the head is held high,
>
> Where knowledge is free,
>
> Where the world has not been broken up into fragments by narrow domestic walls,
>
> Where words come out from the depth of truth,
>
> Where tireless striving stretches its arms towards perfection,
>
> Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit,
>
> Where the mind is led forward by Thee into ever widening thought and action,
>
> Into that heaven of freedom, my Father, let my country awake."

Jai Hind.

Mr. President: I understand that Pandit Jawaharlal Nehru would like to accept some of the amendments. If so it might cut short the discussion to some extent. I should like him to make a statement before the discussion proceeds further.

The Honourable Pandit Jawaharlal Nehru: Sir, I venture to intervene in order to make clear which of the amendments I am prepared to accept and which not. Four amendments have been moved. I may say at the outset that I am prepared to accept Sir Gopalaswami Ayyangar's amendment and not the others. Pandit Bhargava's amendment is more or less the same; it is only a question of wording. The others raise entirely different issues; for instance, the issue of ministers being elected by proportional representation. I can think of nothing more conducive to creating a feeble ministry and a feeble government than this business of electing them by proportional representation: and I would therefore like the House to reject this amendment.

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The other one raises a completely different issue, as to what the nature of the constitution should be. For instance, Mr. Karimuddin's amendment says that "the executive of the Union shall be non-parliamentary, in the sense that it shall not be removable before the term of the legislature," etc. That raises a very fundamental issue of what form you are going to give to your constitution, the ministerial parliamentary type or the American type. So far we have been proceeding with the building up of the constitution in the ministerial sense and I do submit that we cannot go back upon it and it will upset the whole scheme and structure of the constitution. Therefore I regret I cannot accept this amendment of Mr. Karimuddin or of Mr. Focker Sahib.

As to the other point raised it is perfectly true that the original draft that I placed before the House was not at all clear on various matters. It was not clear because there was no intention of drafting it here. These are certain indications for future drafting and some things were obviously taken for granted. It was taken for granted that the Prime Minister would be sent for by the President because he happens to represent the largest party or group in the House; further that the Prime Minister would select his ministers and further that they would be responsible to the House collectively. All that was taken for granted, but perhaps it is better to put that down clearly and the amendment moved by Sir Gopalaswami Ayyangar puts that down very clearly. Therefore I accept that amendment and I hope the House also will accept it and reject the others.

The Honourable Mr. Hussain Imam (Bihar: Muslim): Sir, I had no intention of intervening in this debate because the subject matter of debate as to whether the executive should be parliamentary or non-parliamentary is one which though of great academic interest is not practical politics due to opinion in India being so much in favour of the British model that it is useless for any one to try and sing the praises of the American system and get it adopted. Constitutions are made—although there is an element of finality about them—only for a time; and I hope to live and see the British model dethroned, just as British power is being dethroned, and the better model adopted. But I have been forced to come here because of the speech of Mr. Kamath. Mr. Qazi spoke in praise of the activities of Pandit Nehru in Bihar. I was an eye-witness and saw his torn shirt and the amount of labour that he put in. When an opposite party man admires the other it is not an occasion to be utilised for maligning that party. The endeavour should not be to accentuate differences but to bring about greater unity.

Singularly ill-timed was the attempt of Mr. Kamath to state certain facts which were terminological inexactitudes. It is wrong to say that the League High Command never condemned the atrocities perpetrated on non-Muslims.

Mr. President: I am afraid we are straying into irrelevant discussion.

The Honourable Mr. Hussain Imam: I am not going to discuss this matter. I am simply mentioning that what he mentioned were not

the facts. The fact that Pandit Jawaharlal Nehru went to Bihar was due to the reason that the Congress High Commnad was in control there, and the Congress High Command was in a position to intervene. But in Punjab the League was not the party controlling the Ministry: it was under section 93; in the N.-W.F.P. the Congress was in power.

Mr. President: I would remind the Honourable Member that we are not considering the conduct of any Ministry or of Pandit Jawaharlal Nehru or of anybody else. We are discussing a simple clause of the Constitution. I would request him to confine himself to that.

The Honourable Mr. Hussain Imam: I hope you will not allow such digression to be made by others as well.

Sir, I was saying that the American system has got great advantages which are not appreciated at the moment. A few days ago I learnt that Harold Laski has written a book condemning the American system of having an irremovable executive. He has praised the British system which we are adopting. What are the facts of the British system? The fact that the executive is removable in Britain does not differ materiallly in the day to day administration from the irremovable character of the American system. The power of not voting supplies, which is the essential part of the Ministry's working, is vested in the Legislature so that in the British system as well as in the American system the Legislature is absolute, though in the American Constitution there is the Presidential Veto. But there again they have provided so many checks and balances that the Presidential Veto can be overthrown by a two-third majority of the House of Representatives and the Senate. So you find that the control of the purse by the Legislature is absolute practically in the Parliamentary system and in the non-parliamentary executive system of America.

Now, so far as legislation is concerned, the same thing applies. The Legislature is supreme with certain safeguards. Now, the very fact that a man is appointed who is not a member and the other man is appointed who is a member does not make any great difference in the day to day administration.

Some people have rightly opined that in times of crisis it is better to have one central control rather than a multitude of small minds working together and bringing about a kind of chaos. Well, if a system can work better in times of crisis, I do not understand why it should fail when there is no crisis. Crisis is an extraordinary state of affairs, a really complicated and difficult state of affairs. If a system can work at such a time, it stands to reason that it will work and work smoothly when the times are normal. I, therefore, am of opinion that the non-parliamentary system by means of which the President who gets not less than 51 per cent of the votes of the entire Nation is a better custodian of the Nation's interests than the Prime Minister who, after all, represents only one constituency and the majority of his own party members. The illustration which Mr. Tajamul Husain has given was a little amiss. He said that the Prime Minister can be elected by the Opposition and the Government party combined together. He gave an illustration that if there are 100 men in one party and 50 in another, then at the time of electing the leader, 60 vote for one and 40 for another. The man who was rejected by his own party.

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and might have gone over to the other party, secures 50 votes from the second party and 40 from the first and gets elected inspite of the fact that the majority of his own party was not with him. That apprehension is perhaps based on inexperience. In political parties the differences which exist inside are never ventilated outside. A man who will betray his own party and go over to the opposition will not get a single vote of his own party. In these days of democracy, such things are not possible. Rare instances of this nature may perhaps exist in one corner or other, but on broad outlines, you cannot have this kind of fissiparous tendency. Will the Opposition support a Quisling from the Government? How can that position be allowed? He is not a partyman. That is a contingency which will not arise. But the possibility that a Prime Minister might represent only a minority of the House is worth considering. The system of party working is such that if you belong to one party and secure the majority of the votes you are likely and almost sure to get all the votes of the party. In the instance which Mr. Tajamul Husain gave, what will happen is that the man who secures 60 votes out of 150 will ultimately be the Prime Minister. Now you ask the President to act not on his own judgment, but on the judgment of this man who secured a minority of the votes of the House. He gets 60 out of the 150 votes, of 40 per cent only.

I therefore regard that the system whereby discretion is left to the President to nominate his own Ministers is more democratic and based on better and sounder principles than the system of copying the British model. The British system was found unequal to the task when it was worked in France where the tendencies are to have small groups and parties. They found there over and anon that the British system was unsuitable. U.S.A. has a different system giving the President perfect latitude to form a Government suited to the occasion. For instance, during the war President Roosevelt nominated two Members to his cabinet from the party in Opposition, and they were given very important portfolios. So you have the same system of coalition Government in America without any of the defects which a coalition presupposes. A coalition is composed of divergent elements, each pulling in different ways. I personally think that the American system is not a quarter as bad as has been stated. It is said that the executive is not removable. But the fact is that the executive is more easily removable in the American system than in the British system. Many Members will remember the howl which was raised when Lord Templeton (*Ex* Sir Samuel Hoare) was turned out of the British Cabinet in the days of the Spanish crisis.

But in America everyday you find one Secretary of State being turned out and another being appointed. General Marshall has just come in without any furore being made. There is no one to question the right of the President to select an executive head for the time being. I do not wish, Sir, to detain the House by making a long speech. I wish only to make my position clear. This is my personal opinion, not that of my party, but I thought that it would be better if I explained that the American system is not as bad as it has been painted by its traducers.

Mahboob Ali Beg Sahib Bahadur (Madras: Muslim): Mr. President, Sir, Clause 10 as amplified by Sir N. Gopalaswami Ayyangar introduces a type of executive which is British and which is commonly known as parliamentary. The amendment moved by Kazi Syed Karimuddin Saheb seeks to amend this clause by introducing a mixed type of executive, the Swiss type. Now, let us examine whether the type of executive contemplated by the amendment of Kazi Saheb is undemocratic, is impracticable and does not meet the present circumstances in the country. Under these three heads it is necessary for this House to deal with this subject. Now, Sir, as you know, the British parliamentary system is not a statutory one. It is a historic growth covering several centuries of struggle between the people and the king, to snatch as much power as possible for the representatives of the people to administer the State. It is no doubt true that members of the Parliament are elected; and after the members are elected, the leader of the majority party is called by the Head of the State, *viz.* the King, to form the Government, *i.e.*, he chooses his own ministers. Up to the stage of the return of the members to Parliament, it is democratic. From that stage, it ceases to be democratic, for the leader of the majority party may choose anyone he pleases. The ministers no doubt belong to the party which has been favoured by the electorate, but particular ministers are not chosen by the members of Parliament. Then, Sir, the Government is formed, and it is in the saddle as long as it carries the confidence of the Parliament. But take the case of a certain section of the Parliament not being satisfied with the executive but unable to throw out the Government. It may be that that small section are the people in whom the majority of the electorates have confidence. The anomaly is that the electorate, the real sovereign, is not in a position to throw out the Cabinet. You will therefore see, Sir, that the parliamentary executive ceases to be really democratic. In the first place, parliament does not choose the ministers; in the second place the electorate cannot turn them out. So, really, Sir, from that stage the parliamentary democracy obtaining in England which is sought to be introduced here is not democratic. Let us examine the position taken by Kazi Saheb. After the elections take place, the members of Parliament will elect their own ministers. So, Sir, it is more democratic than the British parliamentary type. There are two processes. One is that members of the Parliament are elected by the people, and the second is that the members of Parliament, the real representatives of the people, elect their own ministers. Let us see whether the system which is sought to be introduced by this amendment is practicable in the circumstances obtaining in the country. I once before said that the democratic system of election of members of Parliament and the election of the Cabinet must be one which will reflect all the sections of the country. It is no use being blind to the realities of the situation. It is no doubt true that people should not think in terms of sections, communities, and special interests. But every day we find that even the parties like the League and the Congress, both inside and outside this House, have always been saying there must be protection of minorities,—religious minorities, sectional minorities and the oppressed minorities and minorities belonging to different tracts of the country. These are facts. Let us not be blind to these facts. Now if the Leader

[Mahboob Ali Beg Sahib Bahadur]

of the Party is called upon by the Head of the State, what he does naturally—and we expect him to do it—is that he would form a Cabinet of men consisting of persons representing some interests or some communities. He is going to do that. It may be by convention or good sense, but that is going to happen. But if that does not happen and he cannot be forced to do it, then, Sir, there will be a lot of discontent, distrust and all that sort of thing. So if we provide in the Constitution itself a democratic system of forming a Cabinet by electing ministers and you introduce a system of election which is called proportional representation, by the single transferable vote or non-transferable vote as the case may be, then it will be satisfactory. It will be democratic and it will reflect all the sections of the people. Besides, that, Sir, as I submitted, it is not possible for the people to turn out a reactionary Cabinet. The party in power may still consist of a majority of persons who are reactionary and in whom the electorate may have no confidence. But in any case the Cabinet will continue and is expected to continue for the full term of four or five years.

In this amendment you have the advantage of the democratic method of electing persons to your Cabinet and having elected them, you ask them to continue, while the person who is elected under the British type always stands in fear of being turned out. So, Sir, if you make this executive not removable for the period, he will be in a better position to work, develop schemes and see to their completion. So, Sir, as I said, this Swiss type has got the advantage of being democratic at certain stages. It is possible for all sections of the country to be represented, it will work better and can complete its schemes and in the present circumstances of the country, is the most suitable and there is nothing wrong in introducing this system. Further, let us remember these systems—the Swiss and the American types—are the result of the experience gained by the other countries where democracy has worked, and it is the considered opinion of the Constitutionalists that the British system is not democratic. After all, who holds the power even in that democracy, in that Parliament? Virtually it is the Prime Minister or his executive; and on account of what is called the discipline in the Party what is considered to be good by that party, Cabinet or the Premier must be followed by all the Members or else disciplinary action will be taken against them. I therefore think, Sir, that the Swiss system that is contemplated by the amendment of Kazi Syed Karimuddin has much to commend it.

Mr. President: I think we have had enough discussion on this clause and I would like to put the amendment and the clause to vote now.

Mr. K. M. Munshi (Bombay: General): I move closure.

Mr. President: There is a closure moved by Mr. Munshi. I take it that the House accepts the closure.

The question is:

"That for Clause 10 the following be substituted:

'There shall be a Council of ministers elected by the National Assembly by a

system of proportional representation by single transferable vote and the council of ministers shall be responsible to the National Assembly'."

The amendment was negatived.

Mr. President: I will put the amendment of Kazi Syed Karimud din to vote :

"That the following be added at the end of Clause 10 :

'That the Executive of the Union shall be non-parliamentary in the sense that it shall not be removable before the term of the Legislature and a member of the Cabinet or the Cabinets may be removed at any time on impeachment before a judicial tribunal on the ground of corruption or treason.

The Prime Minister shall be elected by the whole House by single transferable vote. Other Ministers in the Cabinet shall be elected by single non-transferable vote'."

The amendment was negatived.

Mr. President: I will now put Sir Gopalaswami Ayyangar's amendment to vote :

"That at the end of Clause 10, the following be added :

'The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. The Council shall be collectively responsible to the House of the People.' "

This has been accepted by the Mover.

The amendment was adopted.

Mr. President: There is another amendment by Mr. Thakurdas Bhargava. I think that is covered by this amendment and it is not necessary to take the vote of the House on it.

I will now put the original clause as amended by Sir Gopalaswami Ayyangar's amendment.

Clause 10, as amended, was adopted.

CLAUSE 11

Mr. President: Clause 11. Sir Gopalaswami Ayyangar.

The Honourable Sir Gopalaswami Ayyangar: I beg to move Clause 11 :

"11. The President shall appoint a person being one qualified to be appointed a judge of the Supreme Court to be Advocate General for the Federation, to give advice to the Federal Government upon legal matters that may be referred to him."

Shri Gokulbhai D. Bhatt: *[Sir, I withdraw my amendment in favour of the amendment to be moved by Sir Alladi Krishnaswami Ayyar.]*

Sir Alladi Krishnaswami Ayyar: Mr. President, I beg to move the following amendments to clause 11.

"(1) That in clause 11 after the word 'referred' the words 'or assigned'; be inserted.

(2) That at the end of clause 11 the following be added :

'by the President or are assigned to him under this Act or by any Federal Law, to exercise the powers and discharge the duties vested in him under this Act or under any Federal Law and in the performance of his duties he shall have right of audience in all courts in the Union of India. The

*[ ] English translation of Hindustani speech.

[Sir Alladi Krishnaswami Ayyar]

Advocate-General shall hold office during the pleasure of the President and shall receive such remuneration as the President may determine'."

This is merely a formal amendment, because there are three sets of duties. There are duties which are assigned to him by the President. There are other duties which are referred to him. There are statutory duties under various Acts. It is only to see that the provision is complete that this amendment is moved. I presume there will be no opposition to this.

Mr. President: The clause and the amendments are now open for discussion.

(No member rose to speak)

Mr. President: I shall put them to vote unless Sir Gopalaswami Ayyangar wants to say anything.

The Honourable Sir N. Gopalaswami Ayyangar: I accept the amendments.

Mr. President: I shall put to vote the amendments first:

"(1) That in clause 11 after the word 'referred' the words 'or assigned' be inserted.

(2) That at the end of clause 11 the following be added:

'by the President or are assigned to him under this Act or by any Federal Law, to exercise the powers and discharge the duties vested in him under this Act or under any Federal law and in the performance of his duties he shall have right of audience in all courts in the Union of India. The Advocate General shall hold office during the pleasure of the President and shall receive such remuneration as the President may determine.' "

The amendments were adopted.

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

Clause 11, as amended, was adopted.

CLAUSE 12

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move Clause 12 which runs in the following terms:

"12. All executive action of the Federal Government shall be expressed to be taken in the name of the President."

Very little is required by way of explanation.

(Messrs. M. Ananthasayanam Ayyangar and Kazi Syed Karimuddin did not move their amendments.).

Mr. President: I do not think there is any other amendment to this clause. If any member has given notice of any amendment to this which I have not noticed, he may move.

(No member rose to speak.)

Mr. President: As there is no other amendment, I shall put the clause to vote.

Clause 12 was adopted.

CLAUSE 13

Mr. President: Clause 13.

Mr. R. K. Sidhwa: (C. P. & Berar: General): There is a new clause 12-A, Sir. The additional clause that stands in my name reads thus:

"That after Clause 12, the following new clause be added:

12-A. The Federation shall make laws for—

(1) the Socialist system of economy, nationalisation of high industries, administration on co-operative basis of trading enterprises;

(2) equalisation of capital by private owners;

(3) prevention of exploitation;

(4) abolition of unemployment, and guaranteeing the right of work to every citizen;

(5) recreation, annual vacations, leave with wages for maternity period, child welfare, rest homes, clubs and comfortable dwelling houses for all classes of workers;

(6) right to maintenance in old age, family provision in case of sickness or loss of capacity to work, free medical aid. . . . ."

Mr. President: I think these would come under Part III. When we take it, you may move this. So far as the fundamental rights are concerned, they have already been accepted by the Constituent Assembly and they will again come up at the final discussion. This is only with regard to broad constitutional principles. They will be taken up I think at the final discussion.

Now, Sir Gopalaswami Ayyangar, Clause 13.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move Clause 13.

"13. The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and the National Assembly, comprising two Houses, the Council of States and the House of the People."

With regard to this, there is notice of an amendment that the words "the National Assembly comprising" be deleted. If that is done, the clause will read as follows:

"The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and two Houses, the Council of States and the House of the People."

This is merely to avoid having too many designations for what will be the legislature of the Federation in the future. The Parliament of the Federation is to consist of the President and two Chambers. These words, "the National Assembly", have been put in there for the purpose of referring only to the two Houses to the exclusion of the President. It seems, Sir, that it is unnecessary to have this expression "National Assembly" coming in between the Parliament and the two Houses. It is therefore considered desirable that we omit all reference to "National Assembly" and make the clause read as I have indicated. I think the notice of amendment has been given by Mr. K. Santhanam and I wish to say at the outset that I shall be prepared to accept it.

Mr. R. K. Sidhwa: Sir, my amendment as stated in the paper reads thus:

"That in Clause 13 after the words 'in the Parliament of the Federation' the words **'to be known as Congress' be inserted."**

My object is, Sir, that the freedom that we have attained is under the aegis of the Indian National Congress and I desire the name 'Congress' to be perpetuated in our future Constitution. I understand, Sir, it is the desire of several honourable members that the various words that have to come in the Constitution should be left over for consideration. Under these circumstances, I do not propose to move it now but I do desire that the word 'Congress' must find a place in our Constitution so as to perpetuate this memorable name under which we have fought for 65 years in the History of our country.

Mr. Mohd. Tahir (Bihar: Muslim): *[Sir, in the amendment which I have suggested much thought has not been given to the language. Since we have to discuss on principles, my amendment would read like this:

"That in Clause 13, for the words 'comprising two House, the Council of States and', the word 'namely' be substituted."

My aim in suggesting this amendment is that in the original resolution, where two assemblies have been mentioned and it has been said that there ought to be two Houses, I want to keep one House only.

Sir, we have the picture of one new India before us now, with the crown of freedom in her hands. When we are to forge a new Constitution for her and before I place my humble views regarding that before the House, I want to repeat the couplet:

"Sáre jahán se achchá Hindustán Hamárá
Ham bulbulen haien uski woh gulstan Hamára".

After this, I shall say only this much about the amendment, that when we are making a Constitution for India, it is our duty that we should make such a model constitution that all in the country may feel that this Constitution has been made for them and it is theirs. It must not be that, on looking to that Constitution, the common man may say that though the Englishman has left India, his ghost is yet stalking the country. But this constitution clearly betrays that his ghost is haunting us. I think that if you look at this Constitution and at this clause, which is before us now, you will feel that though no doubt the Englishmen are quitting India, his ghost is walking here. Before framing a constitution for a newly born nation or for a country which has attained freedom, the most essential thing, to my mind, is to change its past traditions and old constitutions, which were hitherto in vogue, in such a way as to transform the whole mentality of the people of that country. Sir, you know how during the past so many years of their rule in India, Britishers have changed and enslaved the mentality of the people. Therefore, when we frame a new Constitution, it becomes our duty to make it in such a way as to transform our mentality from that of slavishness to freedom. The old mentality reminiscent of British slavery must be uprooted. I beg to state that in all the countries various forces are at play—in some countries Socialism works well, in others Communism works well, yet in some others fascism is to be found, and in some Capitalism and Imperialism flourish. Unfortunately, through Capitalism and Imperialism, the Britishers have brought India to her present distress and miserable plight. Sir, I would like to point out that before framing the Constitution of the country, we should scan the history of India during the short period of 1919 to the present day. Sir, from 1919 to 1935 many Constitutions were framed but all of them were the product of British Imperialism. In 1919, local-self government was conceded to India; councils were created, even a council was formed for the centre. It was self-government only in name. But, Sir, if you think over it a little you will find that Imperialism and Capitalism were at its back and they were in full play then. Hence the local bodies could not function freely.

*[ ] English translation of Hindustani speech.

This was because imperialism was associated with them. The masses used to send their elected representatives to the local bodies, but the presence of nominated members there used to counteract the influence of the elected ones. And this system still continues. Similar was the case in the Councils; the influence of the elected representatives was weakened by the nominated members; and any programme for the betterment of the country put forth by the elected representatives used to be opposed by the nominated members. That was the state of affairs under the Act of 1919.

Thanks to God Almighty, when Imperialism and Capitalism were at work in India, a party under the leadership of Mahatma Gandhi came forward to voice the feelings of the poor Indians, and that voice was raised so vociferously that today we find India on the threshold of freedom. Is it then befitting for us today to frame a constitution for India, which smells strongly of Capitalism and Imperialism, nay it fosters them? After some struggle and haggling the 1935 Act was enacted. When, after the Act of 1935, the British Government found that very great political consciousness had been developed in India, and she was pressing her demands more insistently, it changed the Act of 1935. Legislative Assemblies were established in the provinces, where only the elected representatives of the people were to manage the affairs of the Government. But of what good could those provincial assemblies be, when the Upper Houses and the Council of State were tacked on to them? It was a creation of the Imperialistic mind. Thus the democratic atmosphere of the provincial Assembly was negatived, because the Britisher knew that for keeping his Capitalistic outlook safe in India no better plan could be devised. Hence, I would like to point out that nominations, Upper Houses, and similar other tools were the creation of Imperialism. Therefore, when we are framing the Constitution of free India we should keep these things in mind. The Constitution, which we now frame, should be such that we may be sure that it would be acceptable to the people, and they would willingly work it. I would like to ask a few simple questions of the Honourable Mover of this clause. Is he of the opinion that without having two Houses, the progress of India or of any other country would be hampered, or no good laws can be enacted? May I ask him whether an assembly, better and more responsible than the present one, has ever before assembled in India? I would say that never before did an assembly, more responsible than this, sit in India. Do we not see that one House is carrying on all this work, and is framing the Constitution? After some weeks this very Assembly would function, as the Federal Parliament, where laws would be enacted. If the principle that two Houses are essential is accepted, then this Constituent Assembly should be dissolved and reshaped to contain two Houses. If the Honourable Mover cannot divide the Constituent Assembly into two Houses, and he cannot have two Houses of the ensuing Federal Parliament, then it becomes quite clear that he himself does not believe in the principle that two Houses of legislature are essential. But he is making this proposal because of a certain force or pressure upon him—the forces of capitalism. I would like to tell him that the Council of State nomina-

[Mr. Mohd. Tahir]

tions, and Upper House were the creations of Imperialism. Does it mean that poor India is still to labour in the same old way, which though more expensive, added nothing to the efficiency of work? It should not be that even after the Britishers have quitted the country and our Government is established they may have the check to say that their work is still being continued in India. Their work will continue to be accomplished through the devices of the Upper House, nominations, Council of State, etc. With these words, I sit down. If my words have aggrieved anyone, I ask his pardon.]*

Mr. President: Sir B. L. Mitter.

Mr. S. V. Krishnamurthy Rao (Mysore State): I rise on a point of Order. Under rule 32, Clause (1), an amendment must be relevant to the motion to which it is proposed. In the motion that is proposed now, there is no word "Lower House" and the amendment seeks to define what the Lower House means. So this amendment is out of order.

Sir V. T. Krishnamachari (Jaipur State): I was just going to say the amendment is not going to be moved.

Mr. President: So the point of order does not arise.

(Shri Mohanlal Saxena did not move his amendment.)

Shri K. Santhanam (Madras: General): Sir, I move:

"That in Clause 13, the words 'the National Assembly comprising' be deleted."

Already, Sir, N. Gopalaswamy Ayyangar has explained why these words should be deleted. I fully sympathise with the Union Powers Committee in their desire to appropriate all the good words. The expression 'National Assembly' is certainly a very attractive expression, but we must also have the word 'Parliament'. They have devised an ingenious formula for appropriating both these expressions. The word 'National Assembly' is to mean the two Houses taken together and the word 'Parliament' is to mean the two Houses plus the President. However ingenious it may be, in practice it will be most inconvenient and when it comes to translating it into Hindustani, matters will be worse. It will be bad enough to find a suitable translation for 'Parliament' and if we are to find one for 'National Assembly' also, it will be almost a hopeless task. Therefore I move this amendment.

Mr. President: There is no other amendment. Now, the clause and the amendments that have been moved are open to discussion.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, in this motion we have been asked to vote for two Houses, the Lower House and the Upper House. I wish to point out that our experience in the last so many years has been that the Upper House acts as a clog in the wheel of progress. I do not think it is very wise to continue the same thing again in our new constitution. I think that everywhere in the world the experience about Upper Houses has been the same. In no country an Upper House has helped progress. It has always acted as a sort of hindrance to quick progress. Therefore, if we are not careful at present, we shall not be able to make as rapid progress as we need. India is probably the biggest nation in the world. We will have to catch up with Russia and America

]* English translation of Hindustani speech.

if we want to occupy our proper position in the international field. In the next five or ten years we will have to cover the progress which in the normal course would take fifty years. I do not think two chambers will help us in the realisation of our new programme with the required rapidity. Therefore I think that the Mover will kindly review this matter and see that in our new constitution we do not have two Chambers.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to support the clause as it stands and therefore oppose the motion to omit the Second Chamber. We are going to obtain supreme sovereign powers. We have to deal with foreign and domestic matters of extreme importance. In these circumstances it will be wise for us to have two Houses. A popular House is known for its vitality and vigour and that House will have the exclusive power in regard to money. But a Second Chamber introduces an element of sobriety and second thought. In these circumstances it would be wise for us, especially in view of many foreign subjects which are looming large in our minds, to have a Second Chamber. The reason advanced by the last speaker that a Second Chamber would be a disadvantage is, I think, not correct. I submit, Sir, that a Second Chamber would not only be an advantage but an absolute necessity.

Then again, we have to consider the entry of the States into the Federation, and if we have this in mind, a Second Chamber would be an absolute necessity. Without a Second Chamber it would be difficult to fit in the representatives of the States in the scheme of things.

With these few words Sir, I would oppose the amendment to do away with the Council of States, that is, the Second Chamber.

Mr. President: No one else wants to speak probably. Then, the Mover can reply, if he desires to.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I do not think any elaborate justification is necessary for this clause which states that there will be two chambers in the Federal Legislature. The need for a Second Chamber has been felt practically all over the world wherever there are federations of any importance. After all, the question for us to consider is whether it performs any useful function. The most that we expect the Second Chamber to do is perhaps to hold dignified debates on important issues and to delay legislations which might be the outcome of passions of the moment until the passions have subsided and calm consideration could be bestowed on the measures which will be before the Legislature; and we shall take care to provide in the Constitution that whenever on any important matter, particularly matters relating to finance, there is conflict between the House of the People and the Council of States, it is the view of the House of the People that shall prevail. Therefore, what we really achieve by the existence of this Second Chamber is only an instrument by which we delay action which might be hastily conceived, and we also give an opportunity, perhaps, to seasoned people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and

[Sir N. Gopalaswami Ayyangar]

importance which we do not ordinarily associate with a House of the People. That is all that is proposed in regard to this Second Chamber. I think, on the whole, the balance of consideration is in favour of having such a chamber and taking care to see that it does not prove a clog either to legislation or administration.

Nothing more is really needed from me to commend the clause as it is to the House, with the small amendment which was moved here.

Mr. President: I shall first put the amendment of Mr. Mohammad Tahir:

"That in Clause 13, for the words 'comprising two Houses, the Council of States and', the word 'namely' be substituted."

The amendment was negatived.

Mr. President: Then I put Mr. Santhanam's amendment:

"That in Clause 13, the words 'the National Assembly, comprising' be deleted."

The amendment was adopted.

Mr. President: I shall now put the whole clause as amended.

Clause 13, as amended, was adopted.

CLAUSE 14

Mr. President: We shall now pass on to Clause No. 14.

The Honourable Sir N. Gopalaswami Ayyangar: With your permission, Sir, and with the permission of the House, I propose simply to formally move this Clause 14, and to request you to hold over the moving of the amendments and the discussion of this clause to a subsequent day. The clause relates to the composition of the two Houses of the Legislature. A very large number of amendments have been sent in and they raise certain points of importance both to the Provinces and to the Indian States. A good deal of discussion—lobby discussions—has been going on with reference to the merits of these amendments and it seems quite possible that as a result of those discussions, we may be able to put before the House something which will be acceptable to all sides of the House. I only pray, Sir, that you will approve of the procedure I am suggesting, and if you do so, I shall simply read out the clause, Clause 14.

Mr. President: I think the House has no objection to accepting the suggestion, that the discussion on this clause be held over for the present and that the clause be moved formally today.

Honourable Members: Yes.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move Clause 14.

"14. (1) (a) The Council of States shall consist of—

(i) not more than 10 members nominated by the President in consultation with Universities and scientific bodies;

(ii) representatives of the Units on the scale of 1 representative for every whole million of the population of the Unit up to 5 millions *plus* 1 representative for every additional 2 millions of the population, subject to a total miximum of 20.

Explanation.—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States, a Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the members of the Lower House of the Legislature of such Unit.

(c) The House of the People shall consist of representatives of the people of the territories of the Federation in the proportion of not less than 1 representative for every million of the population and not more than 1 representative for every 7,50,000 of the population.

(d) The ratio between the number of members to be elected at any time for each constituency and the population of that constituency, as ascertained at the last preceding census shall, as far as practicable, be the same throughout the territories of the Federation.

(2) The said representatives shall be chosen in accordance with the provisions in that behalf contained in Schedule :

Provided that the elections to the House of the People shall be on the basis of adult suffrage.

(3) Upon the completion of each decennial census, the representation of the several Provinces and Indian States or groups of Indian States in the two Houses shall be readjusted by such authority, in such manner, and from such time as the Federal Parliament may by Act determine.

(4) The Council of States shall be a permanent body not subject to dissolution, but, as near as may be, one-third of the members thereof shall retire in every second year in accordance with the provisions in that behalf contained in Schedule—.

(5) The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer; and the expiration of the said period of four years shall operate as a dissolution of the House :

Provided that the said period may, during an emergency, be extended by the President for a period not exceeding one year at a time and not exceeding in any case beyond the period of six months from the expiry of the period of the emergency."

Mr. President: We shall take up the discussion of this clause at a later stage. We shall proceed to Clause 15.

CLAUSE 15

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move :

"There should be the usual provisions for the summoning, prorogation and dissolution of Parliament, for regulating the relations between the two Houses, the mode of voting, privileges of members, disqualification for membership, Parliamentary procedure; including procedure in financial matters. In particular, money bills must originate in the Lower House. The Upper House should have power to suggest amendments in money Bills; the Lower House would consider them and thereafter, whether they accept the amendments or not, the Bill as amended (where the amendments are accepted) or in its original form (where the amendments are not accepted) shall be presented to the President for assent and, upon his assent, shall become law. If there is any difference of opinion as to whether a Bill is a money Bill or not, the decision of the Speaker of the House of the People should be final. Except in the case of money Bills both the Houses should have equal powers of legislation and deadlocks should be resolved by joint meetings of the two Houses. The President should have the power of returning Bills which have been passed by the National Assembly for reconsideration within a period of six months."

Sir, these are matters for which provision is made in all constitutions and they will follow the usual type in our own constitution. This clause only gives authority for the draftsmen to put the necessary provisions in.

(Amendments Nos. 300 and 301 in List II and Amendment No. 17 in Supplementary List No. 1 were not moved.)

Shri K. Santhanam: Sir, I move :

"That in Clause 15 for the last sentence the following be substituted :

'Bills, other than money bills, presented to the President for assent may be returned by him to the Federal Legislature for re-consideration, but no such return shall be made later than six weeks after the passing of the Bills by the Assembly.' "

[Shri K. Santhanam]

This is intended to make two changes. Now according to the clause as it stands, Bills are to be returned within a period of six months, and as the clause stands, the words "reconsideration within a period of six months" are subject to an ambiguity—whether a Bill should be returned within six months or whether the National Assembly should meet and consider it within six months. Besides, the period of six months is considered to be, by many of my friends, too long a period and therefore this amendment of a period of six weeks has been prescribed for return of Bills by the President.

Then all Bills are liable to be returned under the new clause as it stands. This is obviously inconvenient for money Bills. There should be no power in the President to return money Bills because they are matters of urgency and when the House passes them, it should be taken as final.

Even the Upper House is not considered competent to change money Bills. So when revisionary powers are taken away from the Upper House, there is no reason why power should be vested in the President. Sir, I move:

Mr. President: There is no other amendment. So the original clause and amendment are open to discussion.

Sri M. Ananthasayanam Ayyangar (Madras: General): I support this amendment. I would be glad if in respect of money Bills some provision is made for lessening the period within which it will be open to the President to return them for reconsideration. I have known that in many matters when Bills were passed by the Central Legislative Assembly we had to regret that some provisions crept in which were absolutely contrary to our intentions, and even in respect of a money matter it so happened that in the Budget we voted down an amount which we did not like to vote down and it went to the Upper House and subsequently in another form it had to come back on the intervention of the Governor-General. Even in a money Bill mistakes occur and we want to correct them. As it is, there is no provision for the Assembly to review its own money Bill except by an amending Statute. I do not see why such a provision should not be made even with regard to money Bills. It is true that power ought not to be vested in the President to clog the progress of a money Bill in case of emergency. I wish the draftsmen who will put in details at a later stage will consider the desirability of giving a power to return a money Bill not later than ten days for any technical flaw which may have to be corrected; otherwise for any matter of substance it need not be open to the President to return it, when such matters must be left entirely to the decision of the Lower Assembly, and the President ought not to take the place of or be a substitute for the Lower Assembly or the Upper Chamber in such matters.

As regards the need to return these Bills, I have said that there are many cases where what one House has done in haste has been corrected by another, and even when both the Houses have bestowed their attention there are many matters which may have to be sent for reconsideration. The present provision in the Government of India Act is for the Governor-General to reserve certain Bills for consideration by His Majesty and the same Bill may be returned with suggestions as to which modifications have to be effected.

I would like to make some more suggestions with regard to some other matters which should be included in Clause 15. The amount of care or limitation with which the other clauses have been drafted, this clause has not been drafted. A number of other items are absent. For instance there is no provision made with reference to Budget estimates. Under the existing Act, the Budget is presented first to the Legislative Assembly and then to the Council of State. It is open to the Assembly and the Council of State to revise or alter or reduce it; but if the Assembly refuses to vote a Demand, it cannot be restored by the Council of State. It is a matter of investing the Council of State with this power or taking away the power which the Legislative Assembly has. It is not merely a matter of form. I am sorry it is not included in the list of items for which provision has to be made along with other matters to be considered later.

I would also suggest that provision may be made for the summoning or dismissal of Ministers. There is no provision for it now. We have now made provision, by means of an amendment, summoning a Prime Minister who may later on choose other Ministers who will have to be accepted by the President. But, so far as dismissal is concerned, no provision has been made. If the Ministers lose the confidence of the House, it must be open to the President to call upon them to vacate their offices. Some such provision is necessary.

There are one or two matters more for which provision must be made in Clause 15. For instance, take Sections 103, etc., of the Government of India Act, providing for common legislation for two or more units. Now, there are States and Provinces federating with the Union. There may be certain subjects common to two States or Units. These subjects may be absolutely provincial subjects; all the same, for the sake of convenience, those two Units may require the Centre to pass legislation. With their consent, on the delegated authority, the Central Legislature may pass legislation. There is no provision here for that.

If we accept the three Lists, one of those Lists contains matter which is exclusively within the jurisdiction of the provinces. Special provision has to be made whereby in regard to certain subjects which are in the provincial List exclusively, if two or three Units are interested in a kind of common legislation, there must be an authority who can attend to it and that authority is the Central Legislature which can pass legislation common to the concerned Units. Some such provision must be made in the Constitution and it must be included in Clause 15. The draftsmen of the Constitution may kindly take note of this.

An Honourable Member: Sir, I wish to point out an omission here, due probably to oversight. While considering Clause 15, in the latter part of it the words "National Assembly" were found. According to it, the President should have the power of returning Bills passed by the Assembly. Just now, while considering Clause 13, by an amendment of Mr. Santhanam, the words "National Assembly" have been omitted and 'Federal Parliament' inserted. I think the words 'Both Houses of Parliament' should be there.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I accept the amendment moved by Mr. Santhanam.

With reference to the remarks of the last speaker I may point out that in Mr. Santhanam's amendment he has substituted the words 'Federal Legislature' for the words "National Assembly" already. Therefore the objection raised by the last speaker does not hold good.

There were a number of points mentioned by Mr. Ananthasayanam Ayyangar, the last point being that there should be provision for Federal Legislation in cases where two Units apply for such legislation on matters which might be common to both of them, and for other Units of the Federation to apply that legislation to themselves if they wish to do so. That is an important point, Sir. I could give him an assurance that, when the text of the Constitution comes to be drafted, provision will be made for that sort of thing, along with other matters which have not been specifically referred to in this draft of the principles of the Union Constitution.

I may mention, however, that provision for such matters will not fall under the routine items that are provided for in Clause 15. But I can assure him that the point mentioned will be kept in mind when the text is drafted. I have nothing more to say.

Mr. President: I will put the amendment to vote. The question is:

"That in Clause 15 for the last sentence the following be substituted:

'Bills other than money Bills, presented to the President for assent may be returned by him to the Federal Legislature for re-consideration, but no such return shall be made later than six weeks after the passing of the bills by the Assembly.'"

The motion was adopted.

Mr. President: I now put Clause 15, as amended, to vote.

Clause 15, as amended, was adopted.

CLAUSE 16

The Honourable Sir N. Gopalaswami Ayyangar: The next Clause is 16. It relates to language.

Sri M. Ananthasayanam Ayyangar: May I request the Honourable Mover not to move this Clause now? This may stand over.

The Honourable Sir N. Gopalaswami Ayyangar: I have no objection to it. But I wish to point out that this particular matter is not likely to come up for discussion during this session. If it is the wish

of the House that I should not move this Clause, I shall not move it.

Mr. President: A suggestion has been made that this Clause 16 be not moved at this stage. I will put it to the House.

The question is:

"That the consideration of Clause 16 be postponed."

The motion was adopted.

Chapter III

CLAUSE 17

The Honourable Sir N. Gopalaswami Ayyangar: Clause 17 relates to the power of the President to promulgate ordinances during recess of Parliament.

"17. (1) If at any time when the Federal Parliament is not in session the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament assented to by the President, but every such ordinance—

(a) shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of the Federal Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions: and

(b) may be withdrawn at any time by the President.

(3) If and so far as an ordinance under this section makes any provision which the Federal Parliament would not under this Constitution be competent to enact, it shall be void."

This clause provides for the issue of ordinances by the President. There can be no objection to the vesting of power of this very limited description for making ordinances in the President. The ordinances can be made only during periods when the legislature is not in session, in the case of matters which cannot wait till the next session of the legislature, and an ordinance made has got to be placed before the Parliament as soon as possible and shall cease to operate at the expiration of six weeks from the reassembly of the Federal Parliament. Power is also given to the President to withdraw ordinances at any time during the interim period if he thinks that it is unnecessary to keep them in force. A power of this description for taking administrative action which has to be taken at once and which cannot wait till the Parliament is in session has been found to be necessary. Sir, I move.

Mr. President: Mr. Shibban Lal Saksena.

Prof. Shibban Lal Saksena: Sir, before I move this amendment, I want to know one thing. I had given notice of an amendment modelled on the Irish Constitution and in that I had given five clauses. One of them was that cow slaughter should be prohibited in Bharatvarsh by law. I cannot find that amendment in the printed list supplied to us.

Mr. President: Mr. Shibban Lal Saksena's amendment of which he gave notice relates to that part of the constitution which you have already passed, *viz.* fundamental rights. They will come up again in their final form for discussion at the final stage. So that does not arise at this stage.

Prof. Shibban Lal Saksena: Thank you, Sir.

Sir, I desire that the whole of this chapter should be deleted. This chapter deals with the ordinance-making powers of the President. I think on account of the last so many years of foreign rule and rule by ordinances, we have become so much accustomed to ordinances that in the constitution of free India, we have provided for this ordinance-making power without any compunction.

Shri C. Subrahmanayam (Madras: General): Is the Honourable Member moving this as an amendment?

Prof. Shibban Lal Saksena: I am moving the amendment. Let me read out the amendment.

Mr. President: This is not an amendment. This is a negative of the original proposition. When all the other amendments have been moved, you can speak. This is not an amendment so far as I can see.

(Mr. Nalavade did not move his amendments Nos. 324 and 325.).

Mr. H. V. Kamath: I am told, Sir, that separate provision will be made for the emergency powers of the President, and so at this stage I do not propose to move this amendment, (No. 326).

Shri H. V. Pataskar: Sir, the amendment that stands in my name is as follows:

"That at the end of sub-clause (1) of Clause 17, the following proviso be added:

'Provided that a session of the Federal Parliament shall be held within six months of the promulgation of such an ordinance.' "

So far as Clause 17 is concerned, it confers certain emergency powers of issuing ordinances upon the President. It is further provided in sub-clause (2) that an ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament. And sub-clause (2)(a) says that every such ordinance shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the reassembly of the Federal Parliament. The honourable the mover has explained that this should be done as early as possible. It was with the idea that the Federal Parliament should be called within six months of the promulgation of such an ordinance, that I tabled this amendment. Parliament will be in session some time during the year. Ordinances are obnoxious to democracy and at least to allay public suspicions it is necessary that there should be a provision that within six months of the promulgation of an ordinance a session of the Federal Parliament shall be held, I would therefore like to suggest that when the final draft is made, there should be a definite provision like this in the interests of all concerned, and hoping that this would be done, I do not propose to move this amendment at this stage.

Mr. President: Mr. Kamath.

Mr. H. V. Kamath: In view of what I stated about amendment No. 326 I am not moving this amendment (No. 328).

(Messrs. Jadubans Sahai and Biswanath Das did not move their amendments Nos. 329 and 330).

Mr. H. V. Kamath: In view of the statement made by Mr. Pataskar, this does not arise (amendment No. 331).

Mr. Sidhwa did not move his amendment No. 332.)

Mr. President: There is no other amendment to this clause of which I have received notice. Therefore the clause is now open for discussion.

Prof. Shibban Lal Saksena: Mr. President, Sir, this clause gives the President over-riding powers over the entire National Assembly. We have been accustomed to ordinance rule long enough and I wish that now when we are framing the constitution of free India, we do not provide for this power again. Sir, even during the Great War, the President of the United States of America and the Premier of England did not have that power. When we start on our free constitution, we should try and follow the same canons of democracy which have been followed in these great countries. This sort of power, once given, is bound to be abused. When this power is given, it is often used even for small things. In fact even during this one year since our Ministries have come to power, we got so many ordinances. I therefore think that if this sort of power is given, it will be the very negation of democracy. I think that we must not take this legacy of autocracy from the past slavery of our country into the free India which we are constructing today and we must therefore see that this thing is not given any place in our new Constitution. After all, if there is a grave emergency, our National Parliament will be ever ready to meet the situation. In Britain and in America they have been able to carry on their work without any such powers even during the last great war when their very existence was at stake. In fact, Mr. Churchill used to take the House of Commons into confidence publicly even in the darkest periods during the Great War. This raised the morale of the people tremendously and rallied their wholehearted support in a manner which no other method could have secured. Rule by ordinance has always been hateful to the people. I do not think that our Premiers and our great leaders are so much desirous of having this clause. I strongly feel that this is a step which negatives the entire Constitution. Besides, it is not proper to give such over-riding powers to a man who is not elected by adult suffrage as this will negative the democratic character of the entire Constitution. I, therefore, suggest that we should make no provision for this clause in our new Constitution.

Sri M. Ananthasayanam Ayyangar: Sir, the previous speaker evidently has taken this Section from the Government of India Act and misread it for some other clause coming later. There are two provisions there in the Government of India Act of 1935, which empower the Governor-General to promulgate ordi

[Sri M. Ananthasayanam Ayyangar]

nances. Firstly during the recess or interval between two sessions of the Legislature he does so on the advice of the Ministers and the Ministers take the responsibility for the same. He can do so also in his individual judgment. That means he can in certain circumstances override the decision of the Ministers, but he has however to consult them. The other occasion in which he can promulgate an ordinance in the discharge of his responsibilities specially imposed on him for the maintenance of law and order is in a grave emergency. The life of such an ordinance is only six months, and it cannot be renewed except with the previous consent of His Majesty. My Honourable friend evidently is mistaking the latter provision for the previous one. The previous one is during the recess, when a session of the Assembly is not there and it is not possible to convene a meeting of the Assembly to have an Act and in the place of an Act an ordinance is promulgated. My Honourable friend thinks that the President does it in his discretion. It is not stated in the draft that the President can promulgate an ordinance in his discretion. Then it means that the President promulgates an ordinance on the advice of his ministers. It further means this: that the ministers are responsible for this ordinance and the President is only something like a rubber-stamp giving effect, under his signature, to what the minister wants. The minister is responsible to the legislature. The question of the President not being elected by adult suffrage does not come in, because the ministers who take the responsibility for promulgating the ordinance, can be turned out of office. These objections would not hold good because, we are not giving any autocratic power to the President and the President of his own motion has absolutely no right to promulgate these ordinances. In the Statement of Objects and Reasons *i.e.*, in the small note appended to this clause in the Provincial Constitution itself, an instance is given that Lord Reading had promulgated an ordinance relating to Customs. It was absolutely necessary then. Many such occasions will arise and we cannot stultify ourselves by denying this power to the Government. It is said that there can be no objection if in six months' time session of the Assembly could be convened. Soon after an Assembly session, the ministers are not likely to invoke the special power because if they had already a proposal in view they would have got an Act passed in the Session of the Assembly. If the emergency arises after the conclusion of the Assembly, they would invoke this power and six months thereafter, another session of the Assembly will normally come in. There need be no statutory provision that within six months after the ordinance comes into being or is promulgated, there must necessarily be a session of the Assembly. There will be many cases where for very small matters, which do not involve any principle, an ordinance has to be promulgated. Such matters need not necessitate invoking a session of the Assembly. Therefore, I submit there is no substance in the amendments proposed nor in the opposition to the clause as a whole by Mr. Shibban Lal Saksena.

Mr. H. V. Kamath: Mr. President, I submit, Sir, that there is a slight ambiguity in this Clause 17, which I would request Sir Gopala-

swami to clear in the course of his reply. In this clause we are treating the President and the Federal Parliament as two distinct entities, whereas in Clause 13 we have defined the Federal Parliament as the President *plus* the two Houses, that is, the Council of States and the House of the People. Personally I feel now, Sir, that the deletion of the word "National Assembly comprising" in Clause 13 was unfortunate because if we had retained them we could have defined the Houses jointly as a National Assembly and the Parliament would have been the President *plus* the National Assembly. Otherwise confusion is bound to arise throughout this Constitution as between the Federal Parliament, the President and the two Houses taken together.

Mr. Naziruddin Ahmad: Mr. President, Sir, I wish to say a few words regarding the comment made by the Honourable Member who opposed the inclusion of Chapter III. In his speech he has expressed a sentiment which will be the common sentiment in this House. It is that we are going to have a free India; but with the other sentiment in connection with that amendment, I am not in sympathy. The Honourable Member seems to think that in a Free India there should be no such laws, but we are going to have democratic independence and democracy means rule of law. The Honourable Member suffered from the nightmare of the misuse of the Ordinances, of which we have had enough experience during the last war. I think that nightmare should go. The power will now be exercised by our elected men and our chosen representatives and they would no doubt act on the advice of responsible ministers. It is therefore reasonable to suppose that they would not abuse their powers. In these circumstances, I should suppose that they should have the power. But the question is really the proper application of the power or its mis-application. I think the existence of the power is a necessity so as to enable the Government to run on smoothly. What would happen when the legislatures are not in session and when there is a grave emergency? As to the kinds of emergency, there are an unlimited variety which may arise. A war or a mutiny or anything of that kind may arise. Food shortage and other things may arise. Then the legislature may not be in session. So, the President should have this power which may be employed usefully for the good of the community. In these circumstances, I should submit that the existence of the power is a great necessity and I have no reason to suppose that they would be mis-applied: rather they would be applied for our benefit.

The Honourable Sir N. Gopalaswami Ayyangar: I am very grateful to my Honourable friend Mr. Ananthasayanam Ayyangar for having disposed of so effectively both the amendments moved and the opposition that was offered to the passing of this clause. I have little to add to what he has said on these two aspects.

I would like to refer only to the point that was mentioned by Mr. Kamath, the use of the words "Federal Parliament" here. That is a matter which requires examination. An ordinance is issued by the President and if he lays it before the two Houses of the legislature, there are two contingencies of which you have got to take notice. If the ordinance relates to a matter which deserves to be provided for

[The Honourable Sir N. Gopalaswami Ayyangar]

by permanent legislation, it has got to be approved by the Parliament as a whole including the President, because it will be legislation. But, if it is a case of an ordinance which is only of temporary duration, or it is a case where the Houses of the legislature pass only a resolution disapproving of it and then it ceases to have effect, then, perhaps it is not correct to use the word "Parliament". But all these aspects of the wording of this sub-clause (a) of Clause (2) of this paragraph, will be taken into full account when the text of the draft of the constitution comes to be settled.

Mr. President: I would now put Clause 17 to vote.

Clause 17 was adopted.

CLAUSE 18

Mr. President: We shall now take up the next clause.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, we pass on to Chapter IV, Federal Judicature. The clause which I have got to move relates to a very important part of the constitution. We have got two or three amendments and I hope you will agree that after I move this particular clause further proceedings in connection with the clause may be held over till tomorrow.

Mr. President: I was just going to suggest that you may formally move the clause, the amendments may also be formally moved, and we may discuss the clause and amendments tomorrow. If you can move the clause today, the amendments also could be moved.

The Honourable Sir N. Gopalaswami Ayyangar: As a matter of fact, it may be that an agreed amendment will dispose of all other amendments.

Mr. President: You will move the clause first.

The Honourable Sir N. Gopalaswami Ayyangar: I beg to move Clause 18 :

"18. There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary, except that a judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other Judges of the Supreme Court as also such Judges of the High Courts as may be necessary for the purpose."

I move.

Mr. President: I have got notice of two or three amendments. They could be formally moved today. That may save some time tomorrow.

(Messrs. Jaspat Roy Kapoor, B. Pocker Sahib Bahadur, K. T. M. Ahmed Ibrahim Sahib Bahadur, Rai Bahadur Syamanandan Sahaya and H. V. Pataskar did not move their amendments, Nos. 333 to 336).

Shri K. Santhanam: I move :

"That for Clause 18, the following be substituted :

'18. There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary except in the following particulars :

(a) The additional jurisdiction to be vested in the Supreme Court according to para. 10 shall be by Federal Law.

(b) The appointment of the Chief Justice and the other Judges of the Supreme Court shall be by the President after consulting a joint standing committee of both Houses of the Federal Parliament consisting of six members from the House of the People and five members from the Council of States.

(c) The salary and pensions of the Judges of the Federal Supreme Court should be fixed by Federal Law and they should not be altered in the case of any Judge to his disadvantage.' "

Sir, I have today given notice of a revised version to be substituted in the place of clause (b) and I shall request your permission to move it tomorrow.

Shrimati G. Durgabai (Madras: General): Mr. President, Sir, I beg to move the following amendment:

"That after Clause 18, the following new clause be inserted:

'18-A. New High Courts may be established in any newly created province on an address being presented by the Legislature of that province to the Governor and on the same being approved by the President.' "

Sir, I will ask your permission for a debate on this, later.

Mr. President: It is an independent clause. We shall take it up separately.

It is just one o'clock. We shall adjourn now till 10 o'clock tomorrow.

Sir Alladi Krishnaswami Ayyar: I had given notice of an amendment this morning. May I read it now, Sir?

Mr. President: We have adjourned now. We shall take it up tomorrow.

The House then adjourned till Ten of the Clock, on Tuesday, the 29th July 1947.

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1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA
Tuesday, the 29th July 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 OF THE UNION CONSTITUTION COMMITTEE

CLAUSE 18

Mr. President: We were dealing with Clause 18 yesterday. Some amendments were moved and some other amendments were not moved. There is one amendment by Mr. Ananthasayanam Ayyangar. Will you take that up now?

Mr. H. V. Kamath (C. P. & Berar: General): Sir, before we take up the day's business may I say, that after the adoption of the National Flag, the question of our National Anthem—our Rashtragita—also has got to be determined. You were pleased, Sir, to appoint, in the exercise of your inherent powers, a Committee in connection with the Flag. May I request you, Sir, to similarly appoint a Committee *ad hoc* to go into this question of our Rashtragita so that it may be decided early?

Mr. President: I have had that matter under my consideration but I have not been able to fix that up yet. National Anthem might take a little more time than the Flag did and we should not be in a hurry about it. Therefore I am not in a hurry myself. We will take up amendment No. 15 in Supplementary List II. There is an addition to the clause.

Sri M. Ananthasayanam Ayyangar (Madras: General): Shrimati Durgabai has already moved it.

Mr. President: There is an amendment by Sir Alladi. Will you take that up?

Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, I beg to move the following amendment;

"That for Clause 18 of Chapter IV, the following be substituted:

'18. *Supreme Court.*—There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary, subject to the following modifications and conditions:

(1) (a) A judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also such Judges of the High Courts as may be necessary for the purpose.

(b) For the second sentence of paragraph 15 of the Committee's report the following shall be substituted:

"Their salary may be provided for by statute.

(c) Provision for the removal of Judges of the Supreme Court be made on the following lines:

"A judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour, or incapacity. Further provision may be made by Federal law for the procedure to be adopted in this behalf." ' "

[Sir Alladi Krishnaswami Ayyar.]

I may mention, Sir, that there are certain other amendments by Mr. Santhanam. Some of his amendments overlap but I would like to explain my position with regard to these amendments. If any of his amendment is more comprehensive than my amendment, then I would be glad to withdraw. One thing I want to make quite clear. The object is not to make a comprehensive provision in regard to the Supreme Court. The normal procedure that is adopted in every constitution is to give the main heads of power of the Supreme Court and leave it for Judicature Act to be passed by the Assembly to implement the powers that are conferred under the Constitution. From the very nature of things, you cannot have all the provisions inserted in the Constitution. You may indicate what exactly is the head of jurisdiction in regard to the original jurisdiction. You may indicate what exactly is the basis of the appellate jurisdiction. The reason why more detailed provisions were found a place in the Constitution Act of 1935 is quite obvious because the Constitution then wanted to give only certain restricted powers to the Federal Court. Secondly, the Legislature of India itself was not clothed with plenary powers. Therefore Parliament provided more exhaustively for all those powers to be exercised by the Federal Court than are ordinarily found in a Supreme Court Constitution in other Federations. Therefore under those circumstances, the Committee, as referred to in the existing Government of India Act, has indicated what exactly are the lines of jurisdiction, what exactly are the powers to be exercised both on the original side as a matter of original jurisdiction—and as a matter of appellate jurisdiction and that Committee's report is fairly comprehensive; for example, whether supplementary jurisdiction can be invested in the Supreme Court or not is another point that has been raised. That is again referred to in the Committee's Report. Therefore there is nothing to prevent any supplementary jurisdiction being conferred upon the Supreme Court by the future Union Legislature. That will be competent. The main heads of jurisdiction will be indicated in the Constitution Act. Secondly, supplementary jurisdiction is referred to in the report itself. Then the matters in which it can be taken up by the States are also referred to in the Report. Under those circumstances, I venture to think that this provision is adequate. Then with regard to the removal of judges under the Constitution of 1935 the power was vested in His Majesty in Council and His Majesty would have the advantage of a Judicial body. Therefore that was the basis of the Act of 1935. In cases of misconduct or misbehaviour, His Majesty in Council was clothed with the jurisdiction to initiate any proceedings against a Judge of the Federal Court or against a Judge of the High Courts in India. Under the present Constitution the suggestion that is made in certain quarters that the President of the Union with the advice of some Council or some Panel of Judges should have the power of removal is not, I venture to submit, a proposition which will meet with the acceptance of the House. That will bring the highest judicial dignitary in the land, the Chief Justice or the Chief Justices of the High Courts into the position of a member of the Indian Civil Service

Imagine the President appointing a special Commission of a few judges to enquire into the conduct of the Chief Justice of India or the Chief Justice of the Provincial High Court. I should think that is not a position which will commend itself to the House. This particular provision which I have put in, namely, that "he shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity", is in line with the provision in the various Acts of the British Commonwealth. In Australia, in Canada, in South Africa, there is a similar provision and similarly from the date of the Act of Settlement in England it is only by resolution of both the Houses that a judge could be removed from his office. It does not mean that that power will normally be invoked. The best testimony to such power is that it has never been exercised. It is a wholesome provision intended to be a salutary check on misbehaviour, not intended to be used frequently, and I have no doubt that the future legislatures of India which are invested with this power will act with that wisdom and that sobriety which have characterised the great Houses of Parliament in other jurisdiction. Therefore this provision with regard to proved misbehaviour, they may appoint a Committee of the House; it may be a case of secret session. But ultimately the Resolution will have to be passed by both Houses. And then, he may be removed for misconduct. That is not a happy way of expressing the tenure of a judge. That is why it has been put in the negative—"he shall not be removed etc". Then, further provision may be made by federal law for the procedure to be adopted in this behalf, *i.e.* you cannot put in all the detailed provisions by which the machinery can be set in motion in this Act. As a matter of fact, even a provision like "Further provision may be made by Federal law for the procedure to be adopted in this behalf" does not occur in other constitutions, but there is a tendency to over-elaborate the provisions on our side and that is the only justification for my putting in that clause. Having regard to the very detailed provisions in the present Government of India Act which are intended to be adapted in the present constitution, so far as they are consistent with the main tenet of our constitution, namely, that we are providing for a Free India, there is no difficulty in adapting those provisions to the judicial machinery that we are going to erect. Therefore we have got those provisions. One of our friends has put forward the provision that a judge's salary cannot be reduced during his tenure of office. That provision occurs in the Government of India Act. Therefore, we need not have a detailed provision. Let us concentrate ourselves on the fundamentals (a) in regard to jurisdiction (b) in regard to removal from office. Other matters may be left to Federal law and also to the present Government of India Act which is intended to be adapted into the provisions of this constitution. That is the reason why I have put the word "salary". That may include emoluments, leave allowances and so on and so forth, but all that need not find a place in the constitution. On these grounds I would ask the House to accept this amendment, but if any

[Sir Alladi Krishnaswami Ayyar.]

convincing reasons are placed why another amendment is to be adopted, I am not wedded to my amendment, I shall be glad to yield to any other amendment that may be proposed.

Shri K. Santhanam (Madras: General): Sir, I move:

"That for Clauss 18, the following be substituted:

'18. *Supreme Court.*—There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary except in the following particulars:

(a) a judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also such judges of the High Courts as may be necessary for the purpose;

(b) the additional jurisdiction to be vested in the Supreme Court as per para. 10 shall be by Federal law;

(c) the salaries of the Chief Justice and other judges of the Supreme Court shall be fixed by Statute and the salary of no judge shall be diminished during his tenure of office;

(d) provision for the removal of judges of the Supreme Court shall be made on the following lines:

A judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity'."

Sir, I beg to point out that my amendment embodies all the clauses moved by Sir Alladi Krishnaswami Ayyar and in addition two further clauses. One is with reference to the jurisdiction. The jurisdiction of the Supreme Court is certainly the most important consideration in coming to a decision about the provisions of the Court. I may divide this jurisdiction into two broad categories, namely, the Federal jurisdiction and the non-Federal jurisdiction. Federal jurisdiction falls into four classes. The first class is original and exclusive jurisdiction which refers to inter-Unit disputes or disputes between Units and the Federation. The second class of jurisdiction which is perhaps novel to the Supreme Court in any constitution and which is not vested today in the Federal Court is that the Supreme Court may have both appellate and in some cases original jurisdiction with reference to fundamental rights. That is a new category which is being introduced by our constitution which says that in the case of fundamental rights ordinarily it will have appellate jurisdiction but that in any area where there is no provision or proper court to take consideration of fundamental rights, then the Supreme Court may have even original jurisdiction in the matter of such rights. The third category is the appellate jurisdiction with reference to the interpretation of the Federal Constitution and the fourth category is appellate jurisdiction with reference to Federal laws. All these categories of Federal jurisdiction are common both to Provinces and States and this will be possessed by the Supreme Court. But besides this Federal jurisdiction the Supreme Court will have two categories of non-Federal jurisdiction and this will be confined to Provinces. One is that there will be an appellate jurisdiction with reference to the interpretation of Provincial constitution. Secondly, there will be an appellate jurisdiction with reference to the interpretation of provincial laws. It is a pity that the Committee of the Union Judiciary found that they could not invest the Supreme Court with the same jurisdiction with reference to the States.

I am not here to say that this should be done by coercion or any kind of imposition, but I would appeal to the States that it is to their own advantage that they should invest the Supreme Court with jurisdiction regarding their State constitutions and State laws in the same way as the Provinces have done. With reference to their own State Constitution, there may be disputes between the people and the rulers and the judgment of the State High Court may not be considered binding on the people. They may think that the State Court is not sufficiently impartial to interpret the State Constitution and they may say that only the Supreme Court can give a judgment which both the rulers and the subjects will consider impartial.

Secondly, even in the case of ordinary State laws, many of the States' Laws are mere adaptations of the laws of the Provinces. Some of the States have not got the elaborate machinery, have not got the necessary legal departments to frame the laws precisely. They simply adopt the Provincial laws. That being the case, supposing the State Court interprets a State law in one manner and the same law is interpreted by the Supreme Court in a different manner, there will be great confusion. After much expense and great trouble, the Supreme Court which belongs to both the Provinces and the States is being established, and I think it will be extremely unwise if the States take their stand on a mere question of prestige and fail to take full advantage of the Supreme Court.

In Clause 10, it is said :

"It will also, of course, be open to any Indian State Unit to confer by special agreement additional jurisdiction upon the Supreme Court in respect of such matters as may be specified therein."

While I wish that every Indian State should come into the jurisdiction of the Supreme Court on the same level as the Provinces, I dislike the idea of an Indian State Unit conferring by special agreement additional jurisdiction upon the Supreme Court in respect of certain matters. The vesting of such jurisdiction should be done only by the Federal Legislature. It is only the Federal Legislature which should have the power to amend or alter or in any way modify the jurisdiction of the Supreme Court.

With reference to salary, I quite agree with Sir Alladi that it should not be diminished during the tenure of office. But why not precisely state the clause about the salary here?

I have adopted the same clause for the removal of judges except that I have omitted the clause about further provision which is superfluous.

I think my amendment is more comprehensive and I hope Sir Alladi will accept it.

Sir Alladi Krishnaswami Ayyar: In view of what has been said by Mr. Santhanam, I would like to invite the attention of the House to certain passages in the Report. Paragraph 7 of the Report says :

"If the Union Legislature is competent to legislate on a certain matter. . . ."

Mr. President: It would be better if we had all the other amendments for discussion. If you are going to make a speech, it would be better to do so after the amendments have all come before us.

Sir Alladi Krishnaswami Ayyar: I have only a few observations to make arising from what Mr. Santhanam said just now. I am not going to make a speech. I only want to explain my position with reference to certain passages in the Report itself.

Mr. President: It may not be quite in order to allow another speech.

Sir Alladi Krishnaswami Ayyar: I am speaking only about what Mr. Santhanam spoke, I am not going to speak about my own amendment; but as a member of this House I am entitled to speak on the amendment of another member. I shall reserve my speech to a later stage.

Mr. President: I shall have to consider it at that stage.

Yesterday, the Mover of the clause did not make any speech and we agreed that the speeches should be reserved for to-day. The movers of the amendments also did not make any speeches. Now, this is the time when the mover of the clause and the movers of the amendments may speak; and thereafter they will all be open for discussion.

Sir Gopalaswami Ayyangar, would you like to speak now?

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): Sir, I think the Movers of the amendments and the other speakers may make their speeches. If I have anything to say, I will do so at the end.

Sri M. Ananthasayanam Ayyangar: Sir, you will find that Clause 18 refers to the Report of the *Ad-hoc* Committee on Supreme Court dealing with the functions of the court, the appointment of the judges, their removal etc. This Report consists of more than 15 to 16 paragraphs, every one of which is contested. We have given amendments to the suggestions and recommendations of these paragraphs. So all the amendments to this clause, Clause 18, and the *ad hoc* Committee's Report may be moved formally and then a discussion on the various points can be had and then they may be put to vote in the order of preference.

Mr. President: So far as I can see here, there is no other amendment to Clause 18 of which I have notice. There is only one, your own amendment to the Appendix. You may move it now.

Sri M. Ananthasayanam Ayyangar: Clause 18 is incomplete without the appendix; they go together. I am not moving amendment No. 16. I move No. 17. I do not move No. 18 and No. 19 which stands in the name of Srimati Durgabai and myself will be moved by Srimati Durgabai.

My amendment is as follows:

"That in Para. 9 of the Appendix, state:

(a) that the appellate jurisdiction of the Privy Council in any legal matter is hereby abolished and vested in the Supreme Court;

(b) that pending appeals in the Privy Council shall be disposed of by the Supreme Court."

Sir Alladi Krishnaswami Ayyar: There is another clause in the Report dealing with transitional provisions—Clause 3 which refers to cases pending before the Federal Court. My friend's amendment is to delete that provision. I suggest to him the amendment may be brought under Part XI, Clause 3 which runs in these terms:

"Until the Supreme Court is duly constituted under this Constitution, the Federal Court shall be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court:

Provided that all cases pending before the Federal Court and the Judicial Committee of the Privy Council at the date of commencement of this Constitution may be disposed of as if this Constitution had not come into operation."

My friend's amendment says that it shall not be there. I myself have given notice of an amendment in regard to this clause. Supposing some decision is come to by the House in regard to the amendment moved by my friend and later on I try to move my amendment in regard to the third proviso it would be out of order. The House would have already arrived at some conclusion. Therefore I suggest that any amendment in regard to Part XI, Clause 3, may be taken up along with this in the interest of clarity, because there is a special provision that is made in regard to pending causes in Part XI paragraph 3. Therefore I suggest that if my friend wants to move any amendment in regard to pending causes, it may be moved separately, or, at any rate, I have given notice of an amendment in regard to paragraph 3 this morning. That might be taken up along with his.

Shrimati G. Durgabai (Madras: General): Sir, I beg to move amendment No. 19 in Supplementary List II:

"That in para. 14 of Appendix, the following be added:

'Every judge shall be a citizen of the Union of India'."

Paragraph 14 lays down the tenure of office and conditions of service of judges. Mr. President, I want that every judge shall be a citizen of the Union of India. I have moved clause (a) only: I am not pressing clause (b).

Sri M. Ananthasayanam Ayyangar: Sir, I am not moving my amendment No. 20 on Supplementary List No. II. I will move No. 21:

"That the following be added to the Appendix:

'1. (a) A judge may resign his office by communicating to the President.

(b) A judge may be removed from office on the ground of misbehaviour or of infirmity of mind or body by an address presented in this behalf by both the Houses of the Legislature to the President, provided that a committee consisting of not less than 7 High Court Chief Justices chosen by the President, investigates and reports that the judge on any such ground be removed.

(c) A judge shall cease to hold office on his being adjudged an insolvent.' "

[Sri M. Ananthasayanam Ayyangar]

So far as this is concerned my friend Sir Alladi Krishnaswami Ayyar has already spoken. If you would permit me I will speak immediately or I will reserve my right to speak.

Mr. President: There is another amendment in the third list in your name.

Sri M. Ananthasayanam Ayyangar: I will move that also:

"That the following be added to the Appendix of the Report:

'1. (a) A judge of the Supreme Court may resign his office, by tendering his resignation to the President.

(b) A judge of the Supreme Court may be removed from office by the President on the ground of misbehaviour or of infirmity of mind or body, if on reference being made to it (Supreme Court) by the President, a special tribunal appointed by him for the purpose, from amongst judges or *ex*-judges of the High Courts or the Supreme Court, report that the judge ought on any such grounds to be removed'."

Mr. President: All the amendments have been moved and they are now open to discussion.

Sri M. Ananthasayanam Ayyangar: Sir, there is a jumble of amendments to clause 18 and also the various paragraphs in the Appendix. All of them can be put under five heads. (1) Some of them relate to the authority which is to appoint a Supreme Court judge: (2) the authority that has got the right to remove one or other of them, (3) qualifications for being appointed a Supreme Court Judge, (4) by whom the salary or emoluments have to be fixed, and (5) the jurisdiction that has to be conferred on the Federal Court. These are the five items with respect to which amendments have been tabled.

Now with respect to appointment, I find that there is almost unanimous opinion regarding the power to appoint judges being vested in the President—the President not in his discretion but the President in consultation with his ministers. In addition he can consult the Chief Justice of the Federal Court or the judges of any of the high courts. It may be that he wants to appoint a judge from one of the high courts, in which case he can consult the Chief Justice or the puisne judges of the High Court other than the one whom he wants to appoint. It may not be necessary to consult the judges of all the high courts in the provinces and also in the States. Therefore discretion ought to be given to him to consult such of those judges as may have had the opportunity to know the judge whom he wants to appoint for the Supreme Court. There is almost unanimity of opinion in this matter and there is not much controversy over that.

As regards the right to remove a Supreme Court Judge there is deep difference of opinion on this matter. One school of thought is headed by Sir Alladi Krishnaswami Ayyar, who has tabled an amendment that by an address presented by both Houses of the Legislature to the President any judge or the Chief Justice of the Supreme Court may be removed from office. The amendment that I have tabled is that it is open to the President to appoint a tribunal consisting of not less than 7 High Court Chief Justices to investigate into this matter and come to a conclusion that the judge or judges ought to be removed

for stated misbehaviour or misconduct or similar reason. The President may then remove him. I have also tabled another amendment that a judge may be removed from office by the President on a report presented to him by a panel of judges appointed for the purpose. The objection of Sir Alladi Krishnaswami Ayyar is based on the reason that the highest authority so far as judicial work is concerned in the Union will be at the mercy of the executive head of the Union. It is true that the President will act on the report presented to him by a panel of judges, but in that manner the President's authority is limited. But Sir Alladi thinks that this power ought not to be vested in the President at all, because it will make the Supreme Court judge subordinate to the President. Therefore he has suggested a remedy, that only when the legislature moves the President in this matter by a unanimous resolution, the judge ought to be removed. I have suggested a middle course and have tabled an amendment that any judge of the Supreme Court may be removed from office on an address presented to the President by both Houses of the Legislature but before the address is presented the President must have appointed a committee of seven judges of high courts to investigate into this matter. If they report that the judge in question has committed any breaches for which he is liable to be removed, on that report both the Houses of legislature may present an address to the President or withhold it. Therefore this is a combination of both remedies. The legislature will have control over the removal of a judge and the power will not be exclusively given to a President or a Panel of Judges. As both houses of the legislature are constituted their number is nearly 600. You will remember that with respect to the removal of the President an amendment was tabled and accepted that when the lower chamber or either of the Chambers initiates a resolution for the removal of the President by way of impeachment, a committee has to be appointed by the other house and on the committee's report a resolution must be framed. It is in the fitness of things that a small body should go into the matter of the misbehaviour of a Federal Judge and recommend that he be removed. The entire body of the legislature consisting of 600 and odd members may find it difficult to investigate into the matter, themselves. Therefore it is reasonable to suggest that both the Houses must be moved in the matter after a committee of judges has reported that it is a fit case for interference. I am not alone in making this suggestion. The Sapru Committee Report—Sir N. Gopalaswami Ayyangar was a member of the Committee—has suggested that the President, in accordance with the report of the Tribunal to be appointed for this purpose, may be empowered to remove any judge of the Supreme Court. If Sir Alladi Krishnaswami Ayyar takes objection to this item in the Sapru Committee Report on the ground that it becomes an absolute power in the hands of the President to accept or reject, I could see no objection to his accepting my amendment in this respect which is a combination of both the judicial and executive authority.

The next item in my amendment relates to the qualifications of judges. It is nothing but a reproduction of the qualifications found

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prescribed in the Government of India Act. To this, Mrs. Durga Bai has tabled an amendment saying that the Judge should be a citizen of India. It is not necessary to say anything on the subject after what the Mover has said. It is incumbent on us to see that, as was laid down in the clause relating to the qualifications of the President, a Judge of the Supreme Court, who is the watchdog of democracy, is also a citizen of India. He must be a citizen of a Unit. The third qualification also is reasonable and may be accepted.

The fourth item relates to salary. It ought not to be left to the discretion of the President as to what the salary should be. I have also tabled an amendment on this point, but as Mr. Santhanam has a similar amendment, I am not pressing mine. The salary ought not to be varied by the Legislature as long as a person who has occupied the post continues there. In other cases the salary may be varied.

The last amendment relates to jurisdiction of the Supreme Court. I am sorry to have to say that the approach Mr. Santhanam made to this question of jurisdiction is not quite correct. It ought to be that the Supreme Court has supreme jurisdiction in all matters, but an exception may be made in favour of the States in respect of non-Federal Laws. In respect of any law of the Constitution, it is the Supreme Court that must lay down the law and it must be binding even on States. With regard to British India the Supreme Court is the highest court in the land with original jurisdiction in regard to inter-State matters and with appellate jurisdiction over all provincial High Courts. Our Supreme Court is to supersede and replace the Privy Council which has been exercising a kind of appellate jurisdiction over all matters both civil and criminal. This jurisdiction of the Privy Council may be transferred to the Supreme Court with some restriction regarding appellate jurisdiction in regard to criminal cases in States.

One other point I want to mention in this connection. It was said that the States cannot confer jurisdiction on the Supreme Court by agreement. The Government of India Act of 1935 contemplates the accession of certain States on conditions and terms. If, by the terms of the agreement, the States confer jurisdiction on the Supreme Court while joining the Union, the terms and conditions of their agreement will be taken judicial notice of and will be enforceable. Therefore it is not wrong and it would not be improper, nor would it be beyond our jurisdiction, to lay down similar provisions to say that as regards any State acceding to the Federation on terms and conditions, such terms and conditions shall become part and parcel of the jurisdiction of the Supreme Court Act. The Supreme Court, may, without any further Act in this matter, extend the jurisdiction conferred upon it by agreement. There is nothing novel in it. It is already in the 1935 Act and it may be accepted.

Then, as regards the existing appeals to the Privy Council, it is true that in the Transitional Provisions, there is provision later in this draft. But the provision there is that all pending appeals must be disposed of by the Privy Council itself. It means that even after we attain independence and the new Constitution comes into force, the Privy Council should have jurisdiction over the pending appeals. Sir

Alladi Krishnaswami Ayyar suggests that this matter may be left over to the stage of consideration of the Transitional Provisions. I agree to that suggestion. I suggest that all these five points in the amendments may be put to vote together instead of taking each amendment separately regarding appointment, removal, qualifications, fixation of salary and vesting of jurisdiction in the Supreme Court.

Mr. President: I should like to have the leave of the House for absence for a short time as I have to go to the Aerodrome to receive Mr. Jagjivan Ram who is returning today. (*Cheers.*) I would request Sir V. T. Krishnamachari to take the Chair during my absence. (The President then vacated the Chair, which was taken by the Vice-President, Sir V. T. Krishnamachari, amidst cheers).

Shriyut Rohini Kumar Chaudhury (Assam : General) : Mr. Vice-President, Sir, I would request Honourable Members of the House to take care of their ear-drums when I speak through the microphone. I am a loud-speaker myself and when I speak through the microphone, the sound might become perilous for their ears. With this apology I want to address the House.

I think, Sir, the matter under discussion has been very much complicated by now and I shall endeavour to place before this House what simple-minded persons like me have understood from the debate. I take it, Sir, that after we have established the Supreme Court, the Privy Council will disappear, that the jurisdiction which is now being exercised by the Privy Council will be exercised by the Supreme Court but that the same amount of delay with which the Privy Council used to exercise their jurisdiction in civil, criminal and other matters will not attend the administration of justice by Supreme Court. It has been said, Sir, that it is easy to go into a Court but it is very difficult to get out of it. That has practically been our experience whenever any case had gone to the Privy Council. In the absence of anything said or done to prevent such delays, I take it that justice will be as delayed as it was in the days of the Privy Council. Sir, instead of asking constitutional or unconstitutional lawyers to advise the House on it, I suggest that some persons in this House who had exercised the powers of a judge of a High Court may devise means by which delays in the administration of justice may be avoided, because it is well known that justice delayed is justice denied.

Sir, the next thing that we understand is that these judges will be appointed by the President in consultation with a panel of judges. The panel of judges will therefore have the first voice in the matter of the selection of the judges of the Supreme Court. It means that inferior judges are going to appoint the Supreme Court judges. The judges of High Courts will give the first suggestion as to whom they want as their Chief Justice of the Supreme Court. That suggestion will come from the judges of the High Court who are certainly inferior to the judges of the Supreme Court, but I think there is nothing wrong in that because when even a Sub-Inspector can investigate into cases against their superior officers, when even ordinary electorates can elect the President, there can be no difficulty about High Court Judges appointing or suggesting the names of the judges of the

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Supreme Court. As a matter of fact, I cannot suggest any better alternative myself. Therefore I think that will be the right course.

Then, Sir, I believe that the Supreme Court as I understand it—I am only giving my impression from the discussions—will also on occasions exercise the functions that are now exercised by the Federal Court in constitutional matters. Not only that, they will also advise the Government in certain legal matters. This is a serious proposition so far as I am concerned. I do not understand how, if the Supreme Court really advises the Government in certain legal matters, in any future litigation between the Government and the party affected, the judges will be able to exercise their discretion and give their judgment impartially. That is a point over which I would like to have some elucidation. With these few words, I support the amendment that has been moved.

Sir Alladi Krishnaswami Ayyar: Sir, I want to answer certain points made by Mr. Ananthasayanam Ayyangar and Mr. Santhanam.

In the first place with regard to the vesting of any special or additional jurisdiction in the Supreme Court, it is provided for in the report which is submitted for the acceptance of the House. Clause 7 of the Report runs in these terms:

> "If the Union Legislature is competent to legislate on a certain matter, it is obviously competent to confer judicial power in respect of that matter on a tribunal of its own choice; and if it chooses the Supreme Court for the purpose, the Court will have the jurisdiction so conferred."

Therefore there is nothing to prevent additional jurisdiction being conferred if you adopt that report. When the constitution is finally framed and settled we will have to provide for the vesting of additional jurisdiction.

Then, my friend Mr. Santhanam made a comment on the fact that paragraph 10 of the Report says that it will also of course be open to any Indian State Unit to confer by special agreement additional jurisdiction upon the Supreme Court. In this paragraph the Committee was dealing with a particular kind of jurisdiction which has to be exercised in respect of Indian States, cases involving the interpretation of a law of the Union and cases involving the interpretation of a law of a Unit other than the State concerned, and the States were not prepared to go further than that. Apart from the court being with a jurisdiction to deal with the constitutional validity of law, it is provided that it will also be open to an Indian State to confer additional jurisdiction by special agreement. That does not derogate from the plenary powers of the legislature. At any rate that is not the intention or the object of the Committee. Two things are necessary. So far as the States are concerned, they must agree to supplemental jurisdiction other than the jurisdiction indicated in paragraph 9. There is of course the other necessary pre-requisite, *viz.*, that the Federal Legislature must be willing to clothe the Supreme Court with the jurisdiction. If that is the intention, there is absolutely no necessity for the amendment. The object is not and cannot be to give independent power to a State, without reference to the legislature, to invest any additional jurisdiction. Therefore, when the constitution is

framed, such jurisdiction as may be conferred by the Union Legislature and such other additional jurisdiction as may be conferred by the Union Legislature with the consent of the States in matters in which the States are interested, will have to be specially provided for. This is my submission to you, Sir, with regard to the necessity for additional jurisdiction. That is exactly the object of the two clauses of the report.

Now the second point is about the Parliament being invested with the power of removal of judges. Here I would ask you, Sir, to follow the practice in all the Dominion Constitutions. Whereas on the one hand there is an anxiety to increase the importance of the judiciary, I cannot understand the judiciary also being treated on a level with Government servants or by a kind of special tribunal being invested with the power of removal. That is why in the Dominion Constitution the words "proved misbehaviour" are used. While the ultimate power may rest with the two Houses, the clause provides that the charges must be proved. How exactly to prove the charges will be provided for in the Federal Law. We need not be more meticulous or more elaborate than people who have tried a similar case in other jurisdictions. I challenge my friend to say whether there is any detailed provision for the removal of judges more than that in any other Constitution in the world. The general principle is laid down in the Constitution and later on the Federal Law will provide for adequate machinery and that is the import of the clause. I would, therefore, ask the House to accept the general principle, namely, that the President in consultation with the Supreme Legislature of this country shall have the right. That does not mean that the Supreme Legislature will abuse that power. There is sufficient safeguard in the reference "proved misbehaviour" and we might make elaborate and adequate provision for the way in which the guilt can be brought home to the particular judge in any federal law that may be passed, but that is a different matter.

But I do not think that in a Constitution it is necessary to provide detailed mechinery as to the impeachment, the charges to be framed against a particular judge. To make a detailed provision for all these would be a novel procedure to be adopted in any Constitution. You will not find it in any Constitution, not even in the German Constitution, which is particularly detailed, not in the Dominion Constitutions and not even the Act of Settlement and the later Acts of British Parliament which refer to the removal of judges. Therefore, I think that the very great regard which you pay for judges must be a reason why you should not provide a machinery consisting of five or four judges to sit in judgment over a Chief Justice of the Supreme Court. Are you really serious about enhancing the dignity of the Chief Justice of India? You are. I have no doubt about it. Then there must be some power of removal vested somewhere and therefore you have vested that power in the Supreme Parliament, but not in an unfettered way. It must be through known, normal, ordinary, traditional methods. It is not in the discretion of either House to remove a judge, but the ultimate sovereign power will be vested in the two Houses of Parliament. That is the import of my amendment, Sir.

[Sir Alladi Krishnaswami Ayyar]

Then as to the other points raised—and I would ask you to remember that you are borrowing, so far as it may be, the provisions of the Government of India Act—the salary cannot be reduced during the term of office as provided for in the Government of India Act of 1935 and I have no doubt that the gentleman to whom you are going to refer the drafts of the constitution will take care to see that this provision finds a place in the new Constitution, and I would ask the Members not to undertake the enactment of a regular Judiciary Act in this Constitution. I am not very particular about my amendment. I leave it to the House to accept or reject the matter, but I do hope that unnecessary provisions will not be introduced.

Shrimati G. Durgabai: I moved this amendment, Sir, that every judge shall be a citizen of the Union of India. Of course, I realize, Mr. President that I need hardly say anything on this matter, because I expect that this House will fully realize the importance of this matter and agree with me. My amendment, if accepted, will have this effect that it will remove the alien or the foreigner from the field of selection for the appointment of judges. Of course, I would like to add only one or two words, that only a citizen and a citizen alone who will pledge his loyalty to this Dominion of India will be competent to hold this office and however eminent a man may be and however perfect his legal knowledge may be, a foreigner or an alien can never be competent to hold this post. That will be the effect of my amendment. Mr. President, Sir, we have already provided for this qualification in the case of the Federation and also in the case of the Governor of the Province. If we have provided in these two cases, it is all the more necessary that we should do it in the case of the Supreme Court judges or the judges of the High Court, because the Supreme Court is considered to be the watchdog in a democracy which will guarantee the fundamental rights and other privileges of the citizens of India. That is all I want to say to the House before I commend my amendment for the acceptance of the House.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I really thought that so important an issue as the constitution and functioning of the Supreme Court of the would-be Federation would occupy more time than it has this morning, but I think the main issues have been put before the House in the amendments that have been moved. I agree generally in the propositions which Sir Alladi placed before the House. One general proposition is that in settling the principles of the new Constitution, on the basis of which the text of that Constitution is to be drafted we need not go into too much detail either as regards jurisdiction or as regards procedure. What we need to put into these principles is only the main considerations in drafting the text which will come up before the Constituent Assembly later on. Sir, so far as the Constitution of this Court is concerned, the proposals made in the report of the *ad hoc* Committee have, I am glad to find, received general acceptance in this House. There is one point in the Report of the Committee to which I should like to draw attention. It has said that it has dealt with various matters, but that only some of them need go into the Constitution and others would more appropriately go into the Judiciary Act, which the Federal Parliament may pass after it comes into existence. If we remember that fact we

perhaps would realize that it is unnecessary to go into too much detail at the present moment.

I will only deal with one or two of the points that have been raised, I will take the last point first. Shrimati Durgabai has suggested that every judge of the Supreme Court shall be a citizen of the Union of India. Nobody will take exception to that statement as a general proposition. But we have to take perhaps the composition of the court as it may be at the inception of the constitution, and the question whether it should go into the constitution in the form that has been proposed in the amendment or in some different form, I suggest, might be left to the draftsmen.

The second point, Sir, that was referred to in the course of the debate is the one relating to the appointment of the Judges of the Supreme Court. The *ad hoc* Committee made certain proposals. The Union Constitution Committee modified them and we have before us proposals for a further slight modification of even the recommendations of the Union Constitution Committee. Now, so far as I can see, Sir Alladi Krishnaswami Ayyar and Mr. Santhanam agree more or less as to the lines on which these appointments should be made. The appointments have to be made by the President of the Federation. Before making these appointments, he has got to take into consultation people who might be considered to be familiar with the qualifications and work of individuals whose claims deserve to be considered in this connection. Sir Alladi Krishnaswami Ayyar has proposed that a Judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other Judges of the Supreme Court as also such Judges of the High Courts as may be necessary for the purpose. That is practically also what Mr. Santhanam has suggested in his amendment. One criticism that was offered against this provision was that it does not provide for the appointment of the Chief Justice himself. I trust I have correctly apprehended Mr. Ananthasayanam Ayyangar's criticism on this point. I think, Sir, that, even as the clause stands, a Judge of the Supreme Court might be held to include the Chief Justice of the Supreme Court also. The clause does not say, a Puisne Judge of the Supreme Court. As regards the people to be consulted, the people to be consulted are the Chief Justice and such other Judges. An appointment has ordinarily to be settled before a retiring Chief Justice vacates his office. It is not unreasonable, perhaps it would even be very desirable, that the outgoing Chief Justice should be consulted as also his colleagues and other Judges before the appointment of the new Chief Justice is settled. Therefore, Sir, the clause as put by Sir Alladi Krishnaswami Ayyar, to my mind, covers also the procedure for the appointment of the Chief Justice.

Sir, the other important point relates to the removal of the Judges of the Supreme Court. As regards this, there are two alternatives which seem to deserve consideration. But before referring to these two alternatives I wish only to point out that the contingency of removing a Judge of the Supreme Court from his office is perhaps one

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of the rarest that we can contemplate. I cannot recall any instance, in Great Britain, for instance, where, on an address of both Houses of Parliament, a Judge has been actually removed. I speak subject to correction. Even in constitutions like those of the Dominions where a similar provision exists, I am not personally aware of any instance where that provision has been used. So, whatever procedure you prescribe for the removal of Judges for proved misconduct or misbehaviour, that procedure is likely to be used only in the rarest of contingencies and very probably will not be used within my life time or even the life time of those who are much younger in this House than I am. That being so, I wish that the House will consider on their merits the two alternatives that have been proposed.

One is the procedure suggested by Sir Alladi Krishnaswami Ayyar which runs in the following terms :

"A Judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity. Further provision may be made by Federal Law for the procedure to be adopted in this behalf."

Sir Alladi Krishnaswami Ayyar has explained the implications of this particular draft. One aspect of it which appeals to me very much is the way in which it has been put in this negative form. It takes account of the fact that a Judge is not a functionary whose removal we should contemplate with equanimity. What he says is that a Judge shall *not* be removed except according to certain procedure and to that extent I think it is an improvement on the other suggestions which have been made from time to time.

The other alternative which has been placed before the House is that of Mr. Ananthasayanam Ayyangar. His draft is :

"A Judge of the Supreme Court may be removed from office by the President on the ground of misbehaviour or of infirmity of mind or body, if, on reference being made to the Supreme Court by the President, a special tribunal appointed by him for the purpose, from amongst judges or ex-judges of the High Courts or the Supreme Court, report that the judge ought on any such grounds to be removed"

This is a very slightly modified version of the recommendation which was made by the Sapru Committee in this regard.

Between the two amendments, there are certain considerations which we should take into account before we decide which of them we will favour. Among these considerations is the one, that it seems odd that, for the purpose of deciding the question as to whether a Judge should be removed from his office, we should invite the two Houses of the legislature, one of them containing something like 500 or 600 members and the other perhaps consisting of about half that number, to pass an address, that is to say, a resolution, giving their verdict as to whether a Judge has misbehaved and, if so, whether he should be removed from his office. It does seem to me, Sir, that that is a procedure before accepting which we shall have to think furiously. I say

so for this reason that we have, even in the case of ordinary public servants, travelled far away from the principle of either getting them appointed by popular vote or of getting them removed by popular vote. If you are going to introduce in the case of Judges of the highest Court in the land the principle which you are not prepared to accept even in the case of ordinary public servants, that procedure, Sir, seems to me to stand in need of very heavy justification, if I may put it in those words. The other procedure that has been suggested is that the question of whether a Judge has misbehaved and therefore whether he should be removed should be decided or adjudicated upon by the President on the report of a Tribunal which he will specially appoint for the purpose from amongst the Judges, and *ex*-Judges of either the Supreme Court or the High Courts. That again, Sir, is placing a Judge who is accused of misbehaviour in the dock before a Tribunal some of the members of which might have held positions subordinate to him in the judicial hierarchy of the country. So there is that to be said against that procedure also. But personally I am not prepared to say that either the one or the other is necessarily to be preferred because, whether you adopt the one or the other, it is my expectation that we shall probably never have an occasion for using this procedure for dealing with any individual judge of the Supreme Court. I should leave it to the House to decide between these two alternatives and whatever alternative it chooses, will be put into the text of the Draft Constitution.

As regadrs the question of additional jurisdiction, the jurisdiction which relates to States which might be conferred on the Supreme Court, the point is sound that while the Indian State has got to cede, or agree to, this jurisdiction by means of an agreement, the actual conferment of this jurisdiction on the Supreme Court has to be by Federal Law. That being so, Sir, what I would suggest for your consideration is that so far as the questions relating to the citizenship of the Judge and to the conferment of additional jurisdiction on him are concerned, the amendments that have been tabled for those purposes might, if the Movers agree, be withdrawn on the assurance that the points mentioned in the course of this Debate would be borne in mind when the text of the Constitution is drafted. You may, Sir, if you agree, put to the House only the clause relating to the appointment of Judges of the Supreme Court and the alternative clauses which have been suggested for providing for the removal of Judges of the Supreme Court. With a decision on those points and the further decision that we generally accept the report of the *ad hoc* Committee, we shall have sufficient authoritative material on which the text could be drafted.

Mr. Vice-President: I propose to place before the House first the amendments regarding the removal clause. The first amendment is Sir Alladi Krishnaswamy Ayyar's which appears in Supplementary List III, Para. 7-C:

"A judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the

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Union in the same session for such removal on the ground of proved misbehaviour or incapacity. Further provision may be made by Federal Law for the procedure to be adopted in this behalf."

I place that amendment before the House.

The amendment was adopted.

Mr. Vice-President: There is a further amendment by Mr. Ananthasayanam Ayyangar 21-(b). I take it that that amendment is not pressed.

I now put to the House Mr. Ananthasayanam Ayyangar's amendment 21—1(a) in Supplementary List II which reads as follows:

"1(a) A judge may resign his office by communicating to the President."

The amendment was negatived.

Mr. Vice-President: I now put Mr. Ananthasayanam Ayyangar's amendment 21—1(c) which is as follows:

"A judge shall cease to hold office on his being adjudged an insolvent."

The amendment was negatived.

Mr. Vice-President: I now place before this House Mr. Ananthasayanam Ayyangar's amendment 19—(a) which reads as follows:

"Every Judge shall be a citizen of the Union of India"

Shrimati G. Durgabai: Sir, I moved that amendment but in view of the assurance of Sir N. Gopalaswamy Ayyangar, I do not wish to press my amendment. But it will find its place in the draft.

Mr. Vice-President: Amendment No. 19(a) is sought to be withdrawn. Does the House permit the withdrawal?

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

Mr. Vice-President: I now place before the House Mr. Santhanam's amendment 8 (c) in Supplementary List III:

"(c) the salaries of the Chief Justice and other judges of the Supreme Court shall be fixed by Statute and the salary of no judge shall be diminished during his tenure of office;"

The amendment was negatived.

Mr. Vice-President: I now place before the House amendment No. 17 in List II:

"That in para. 9 of the Appendix state:

'(a) that the appellate jurisdiction of the Privy Council in any legal matter is hereby abolished and vested in the Supreme Court;

(b) that pending appeals in the Privy Council shall be disposed of by the Supreme Court'."

Sri M. Ananthasayanam Ayyangar: Sir, I suggested that I will move it later.

Mr. Vice-President: All right, the amendment will stand over. Now, Mr. Santhanam's amendment No. 8(b).

Shri K. Santhanam: I do not press the amendment, Sir.

Mr. Vice-President: Does the House permit the amendment to be withdrawn?

Honourable Members: Yes.

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

Mr. Vice-President: I now put the clause, as amended, to vote.

The Honourable Sir N. Gopalaswami Ayyangar: May I point out that the amendment proposed regarding the appointment of the judges has not yet been put.

Mr. Vice-President: There are no amendments. I think all the proposals are the same. They conform to the paragraph in the memorandum, and there is no substantial difference.

I now put Clause 18, as amended, to vote.

Clause 18, as amended, was adopted.

Shrimati G. Durgabai: Mr. Vice-President, yesterday I moved an amendment that Clause 18A be added to Clause 18. It appears in the Supplementary List as amendment No. 15. It reads:

"18A. New High Courts may be established in any newly created province on an address being presented by the legislature of that Province to the Governor and on the same being approved by the President."

Mr. Vice-President: Does any member wish to speak on this proposed Clause 18A?

Shrimati G. Durgabai: I wish to say a few words in support of my amendment. Sir, in the draft I found no such provision made, as is contained in my amendment. So I thought it would be necessary, because by virtue of the power we have given to the Federal Legislature we find that some new Units will be springing up hereafter, and not only that, it will become more necessary, because already there are two newly carved out units, West Bengal and East Punjab. Therefore some kind of procedure must be laid down for the establishment of High Courts in these newly created units. That is why I have suggested the addition of this Clause 18A.

Sir Alladi Krishnaswami Ayyar: I do not see any necessity for such a provision, because if there is to be a province then the judiciary, legislature are all complementary and that will be part of the provincial constitution and the organisation of the province. Therefore there is no need for saying that there must be a High Court. You cannot conceive of a Province normally without a separate judicature and separate legislature. There need not be any special resolution of the legislature. It may well be part of the provincial constitution that there shall be a High Court in each province. Therefore, subject to any drafting and other changes that might be made in principle what Shrimati Durgabai says might be accepted, but there is no necessity for making this provision. We have had common High Courts working, but in the new dispensation there may be no necessity for that. I am told with regard to Assam and Orissa

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there may be necessity. Ultimately when the constitution is settled this will be subject to the provision that may be made in the provinces. Subject to that understanding, I have no objection to this clause being passed.

Sri M. Ananthasayanam Ayyangar: Such a provision is necessary in the constitution. So far as the appointment of High Court Judges is concerned, in the provincial constitution that we have passed, there is a provision that the judges should be appointed by the President in consultation with the Chief Justice of India, the Chief Justice of the province and other Chief Justices also. Now, when even the question of the appointment of the judges is within the power of the Federation and the Union President, no authority is specified for establishing a High Court in a newly established Province. I ask, who is the authority to establish a High Court. That is not provided for at all. Is it to be left entirely to the Province without the concurrence of the Centre? Under the present Constitution, the Government of India Act recognises a number of High Courts established in some provinces, but as regards new ones it says that they may be established by His Majesty—read Section 219 of the Government of India Act. Therefore, we must decide here and now what the authority is going to be which will in future establish new High Courts. Shall we say, as was said by Sir Alladi, that the entire matter will be left to the Provinces? Then the establishment of a High Court in a province will be entirely within the jurisdiction of that legislature whereas the appointment of the judges, as if that is more important than the establishment of the High Court, is to be regulated by the President of the Union. This seems to be inverting the procedure. Under these circumstances, I respectfully submit that my Honourable friend Mrs. Durgabai has rightly pointed out that power ought to be vested with the President to approve or reject any address presented by the Provincial Legislature, in the matter of establishing a new High Court.

Shrimati G. Durgabai: Mr. Vice-President, Sir, with your permission I would like to add a few more words to this amendment:

"That new High Courts may be established in the already existing provinces of Orissa and Assam and also in the newly created provinces."

The rest remain as they are.

I commend this amendment for the acceptance of the House.

Dr. P. S. Deshmukh (C. P. & Berar: General): Sir, with due respect I also beg to differ from the view expressed by Sir Alladi on this matter. As the previous speaker has pointed out, we should lay down the procedure for the establishment of new High Courts in the Provinces. As we all know, the process of establishing High Courts is a fairly long-drawn out one and it cannot be left to the Provinces to decide to have High Courts on their own initiative and on their own decisions. There ought to be some authority and the right authority would be the Federal Parliament and the President to decide whether

particular unit is large enough or is competent enough, or whether there is sufficient necessity for an independent High Court. The establishing of a High Court is not an ordinary matter and the lack of adequate provision or procedure in the Constitution would be a very great deficiency indeed. I am very glad, Sir, that the lady Member has pointed out this deficiency and I hope the amendment proposed will be accepted.

Shri Raj Krushna Bose (Orissa: General): Sir, with due respect to the Mover of the amendment I think, this is a question which has not been taken up or considered by the Steering Committee and as the amendment affects the powers of the provinces in regard to the establishment of High Courts and as it is proposed that these powers are to be restricted by the Centre, one does not know what the effect of the amendment will be so far as the power of the provinces are concerned in this matter. The names of certain provinces were mentioned, Orissa being one of them. I know, Sir, a few years ago a committee was appointed in that province for the creation of a High Court and that committee submitted a report. It has not yet been considered by the Legislature and no decision has been arrived at. I think the amendment is of such an important nature that it should go to the Steering Committee and proper thought bestowed on it, before the House takes it up for final consideration. I would, therefore, request the Mover to agree that the matter may be referred to the Steering Committee so that we may have their views before we finally decide about it.

Mr. M. S. Aney (Deccan States): Sir, this amendment refers to the establishment of provincial High Courts and so should not come under this Chapter which relates to Federal Judicature.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I entirely agree with the point mentioned by Mr. Aney. I do not think that the clause porposed will come appropriately within the orbit of this chapter which is entitled "Federal Judicature". What is proposed is the establishment of High Courts in newly created provinces. I take it, Sir, that, when you see the text of the new Constitution, you will probably find a provision which will say either that there shall be a High Court in every province just as there shall be a Supreme Court for the Federation: or if it wishes to make a distinction between Provinces which can afford to have a High Court and Provinces which cannot, then perhaps it will name the Provinces where High Courts exist and will take power for the establishment of new High Courts separately in the Provinces where they do not exist. What I wish to point out is that a matter of this description will not be lost sight of in framing the final text of the provincial portion of the Constitution. So far as this Chapter is concerned, I think this amendment is altogether out of order.

Sri M. Ananthasayanam Ayyangar: Sir, I am a member of the Steering Committee and I know that many amend-

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ments which have been moved here have not been before that Committee. I know the scope of the Steering Committee. It has not considered clause by clause this draft constitution or the Provincial Constitution. There are other consultative committees; there is the Provincial Constitution Committee, there is the Union Constitution Committee and so on. It is not the business of the Steering Committee to consider this amendment and I see no point in the objection that this should first go before the Steering Committee. If it actually comes up there, we will say it is none of our business.

As regards the point of order raised by Sir N. Gopalaswami Ayyangar, that the amendment does not come under this particular Chapter, I would say the new Clause 18(a) of the Lady Member wants the President to establish a High Court on an address being presented by the Legislature. If this is to be relegated entirely to the Provincial Constitution, and if we do not make a provision here that the President in Council, with the aid of his Ministers should be the final authority, then there will be a lacuna. There will be provision only on one side in the provincial constitution, there will not be a corresponding provision in the federal side of the Constitution Act. Whether it fits in as 18 (a) or whether it comes in the earlier or later portion of the Bill does not matter; but provision has to be made in this Constitution and similar provision has also to be made in a detailed manner in the provincial constitution.

Mr. Vice-President: I understand Sir N. Gopalaswami Ayyangar's assurance to mean that provision will be made for this in whatever parts of the Constitution such provision may be found necessary, by the draftsmen. Does the Mover press the amendment in view of that assurance?

Shrimati G. Durgabai: On that assurance, I withdraw my amendment.

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

CLAUSE 19

Mr. Vice-President: Now, we go to Clause 19.

The Honourable Sir N. Gopalaswami Ayyangar: Clause 19 is in the following terms:

"There shall be an Auditor-General of the Federation who shall be appointed by the President and shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court."

The principle underlying this clause is that, if the Auditor-General is to carry out his functions efficiently, he has to be an officer who feels that he is independent of the favours of the executive government whose accounts he has to audit, and that is why his status and position are placed on the same footing as those of the judges of the Supreme Court. This, I think Sir, is a very necessary clause in the Constitution.

Mr. Vice-President: There is only one amendment to Clause 19 by Shri Mohanlal Saksena (item No. 18 of Supplementary List No. 1).

(The amendment was not moved.)

Mr. Vice-President: Does any member wish to speak on the original Clause 19?

The question is:

"That Clause 19 be adopted."

Clause 19 was adopted.

CLAUSE 20

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I move that Clause 20 be adopted. The clause is as follows:

"The duties and powers of the Auditor-General shall follow the lines of the corresponding provisions in the Act of 1935."

(Amendment No. 337 of List No. 2 was not moved.)

Clause 20 was adopted.

CLAUSE 21

The Honourable Sir N. Gopalaswami Ayyangar: I move that Clause 21 be adopted. It is in the following terms:

"There shall be a Public Service Commission for the Federation whose composition and functions shall follow the lines of the corresponding provisions in the Act of 1935, except that the appointment of the Chairman and the members of the Commission shall be made by the President on the advice of his ministers."

Mr. Vice-President: There is an amendment in the name of Mr. H. V. Pataskar.

Mr. H. V. Pataskar (Bombay: General): Sir, I move:

"That in Clause 21, for the words 'his ministers' the words 'his Council of Ministers' be substituted."

I understand that there is another amendment next to mine—No. 339—which wants the deletion of all these words. If that amendment is passed, naturally my amendment will fall through. But if the words are to be retained, then the words should be 'Council of Ministers' and not 'ministers' for the simple reason that in Clause 10 which we have already passed what we have provided for is a 'Council of Ministers'. What I have proposed is only a verbal amendment and it is dependent on the fate of the subsequent amendment—No. 339.

(Amendments Nos. 339 and 340 were not moved.)

Shri V. I. Muniswami Pillai (Madras: General): As these matters are being considered by the Minorities Sub-Committee I do not propose to move my amendment (No. 341).

(Amendment No. 342 was not moved.)

The Honourable Sir N. Gopalaswami Ayyangar: Sir, the only amendment that has been moved is that of Mr. Pataskar. He wants that for the words 'his ministers' the words 'his Council of Ministers' should be substituted. If Mr. Shibbanlal Saksena had moved his amendment—No. 339—I should have accepted it because really the words 'on the advice of his ministers' are absolutely unnecessary. If an appointment has to be made by the President he is not under the principles of the Union Constitution at liberty to make appointments without the advice of his ministers. But the words being there, and no amendment having been moved for the deletion of those words, I do not think

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it is necessary for me to agree to the substitution of the words 'Council of Ministers' for 'ministers'.

Sir Alladi Krishnaswami Ayyar: I should like to move the amendment standing in the name of Mr. Shibbanlal Saksena as it will introduce an element of uniformity. Whenever the word 'President' is used what is understood is the President in consultation with the Cabinet. As such, suddenly if in a particular clause we mention about the ministers that might give rise to a difficulty. Therefore, for the purpose of clarity and uniformity it is as well that the words 'on the advice of his ministers' are omitted.

Mr. Vice-President: I do not think Mr. Saksena meant his amendment in that sense; he probably meant it in a completely different sense.

(By this time Mr. Shibbanlal Saksena was present in the House.)

Prof. Shibbanlal Saksena (U. P.: General): Sir, I beg to move my amendment No. 339 which runs as follows:

"That in Clause 21, the following words be deleted:

'on the advice of his ministers'."

These words are unnecessary as the President has not been given any power to act in his discretion and will always act on the advice of his ministers. These words may, therefore, be deleted.

Sir Alladi Krishnaswami Ayyar: I second the amendment.

The Honourable Sir N. Gopalaswami Ayyangar: Now that the amendment has been moved, I accept it.

Mr. H. V. Pataskar: In view of the fact that amendment No. 339 has been moved I would like to withdraw my amendment.

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

Mr. Vice-President: The question is:

"That in Clause 21, the following words be deleted:

'on the advice of his ministers.'"

The motion was adopted.

Mr. Vice-President: The question is:

"That Clause 21, as amended, be adopted."

The motion was adopted.

CLAUSE 22

The Honourable Sir N. Gopalaswami Ayyangar: I move Clause 22, *viz.*:

"22. Provision should be made for the creation of All-India Services whose recruitment and conditions of service will be regulated by Federal law."

As the House is aware, we have had All-India Services for quite a long time. They have been under the control of the Secretary of State. This control will be terminated from the 15th August. The question arises whether, in conformity with the principle of provincial autonomy, it is desirable that you should continue in being a Service

recruited on an All-India basis, but under the control which will be prescribed by Federal law.

Some of you perhaps are aware of the steps which have been taken by the Home Department of the Government of India for the purpose of ascertaining the wishes of Provincial Ministers as regards the desirability of establishing an All-India Administrative Service. There was general unanimity and steps have been taken to establish such a Service. This particular clause only attempts to translate the executive action that has been taken into something which will have the authority of law in the future. What it prescribes is that the Constitution should make provision for the creation of All-India Services wherever such a course may be considered necessary. All-India Services will be desirable, I take it, in cases where you wish to attract to the highest services the best material that may be available in the country, and you will have to transgress provincial boundaries for the purpose of attracting this material if you want such material to take service whether under the Provincial Governments or under the Federal Government. A question will arise whether this is in conflict with provincial autonomy, whether it is not the proper thing for you to leave the whole thing in the hands of Provincial Ministers. All that I can say at the present moment is that those responsible Ministers who are in charge of provincial administrations have felt the need already for recruitment on an All-India basis and it will be only the part of wisdom to make provision for such an arrangement in the new Constitution also.

Mr. Vice-President: There is an amendment by Mr. Santhanam.

Shri K. Santhanam: I am not moving it, Sir.

Mr. Vice-President: As there are no other amendments to this clause, I will put Clause 22 to the vote.

The question is:

"That Clause 22 be adopted."

Clause 22 was adopted.

CLAUSE 22A

Mr. Vice-President: There is notice of a new Clause 22A. I call upon Mr. Ananthasayanam Ayyangar to move it.

Sri M. Ananthasayanam Ayyangar: Sir, I move:

"That after Clause 22, the following new clause be inserted:

'22A. Provision shall be made in the Constitution for granting commissions in the Army, Navy and Air Forces and for appointment to other defence services, conditions of service and control of the services.

A military or defence services commission may be set up on the lines of the public services commission for civil appointments.' "

Sir, we just moved and passed Chapter VI relating to Services. Clause 21 makes provision for bringing into existence a Public Services Commission on the lines of the one laid down in the Government of India Act of 1935. In section 266 of the Government of India Act provision is made to confer on the Public Services Commission the right to recruit only to civil services. Sub-section (a) reads as follows:

"On all matters relating to recruitment to civil services and to the civil forces."

[Sri M. Ananthasayanam Ayyangar.]

Therefore Clauses 21 and 22 relate only to civil forces and no provision has been made in Chapter VI for recruitment to defence services. There is provision in Part X of the Government of India Act, 1935 for the recruitment of defence service. Whether deliberately or by inadvertence this particular provision has not been incorporated in the Draft Constitution. The first part of that Chapter relates to recruitment of defence services and the second part relates to recruitment of civil services for which a Public Service Commission has been appointed. But in our Draft Constitution, Chapter VI relates only to recruitment to civil services, the earlier portion in the Chapter in the Government of India Act which relates to the defence services has been left out. Under the present Constitution, recruitment to Commissioned ranks and grant of King's Commission or the Viceroy's Commission are regulated by Orders in Council of His Majesty. Then there is recruitment to the ordinary defence services. Now what is to take the place of His Majesty's Orders in Council? The Defence services from a very important portion of our services. The gazetted posts and also the civilian posts in the defence services are very important and responsible posts. Shall we leave the recruitment to these posts to the Heads of Departments or the Commander-in-Chief or his lieutenants to fill them up as they like? No doubt rules will be framed regulating the grant of these commissions. But are we not to have an independent body like the Public Service Commission for the recruitment of officers and for recommending the grant of King's Commissions?

Sir, hitherto the powers-that-be had classed some people of India as martial and some as non-martial. That view held the field for a long time. But the non-martial races who were recruited during the last war have proved to the hilt that they were equal to the so-called martial races. However, if this power is left in the hands of the powers-that-be for the time being and no independent authority like the Public Service Commission is established for recruitment to defence services, there will be scope for provincialism and some sections of the population might be given encouragement to join the army and not the others. If there is need for having an independent body like the Public Service Commission for recruitment to the civil services and to hold the balance evenly between the Provinces, *a fortiori*, there is greater reason to have something like a Defence Service Commission. That is the amendment I have tabled. I should like to know why it has been omitted and why no provision has been made for recruitment to defence services in the Constitution.

When we copy Chapter X of the Government of India Act, it is necessary that we should copy it in whole. Defence services recruitment is an important matter and I do not like it to be left to the Federal Legislature, however good it may be. May be one particular party is in power. My point is, let not one section be given preference to the detriment of another section. Sir, I commend this resolution

to the acceptance of the House that a Defence Services Commission ought to be appointed on the lines of the Public Services Commission.

Mr. Vice-President: Any other member who desires to speak on this amendment?

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. Vice-President, Sir, I have great pleasure in supporting the amendment that has just been moved. If you look at Chapter I, Part IV, para. 7, you will find that we have already approved of the President having the supreme command of the Defence Forces of the Federation. Of course, when you have used the expression 'supreme command' I take it that you mean that the President will devise ways and means for recruitment to the Forces under him. Now the amendment seeks to clarify and make the position quite clear as to how officers for the Defence Forces shall be appointed. At the present moment, Mr. President, as you are aware, there are Services Selection Boards, several in number, throughout the country, and I myself have worked on one of these Boards during the last three years. I know that the present system, the psychiatric system as it is called, is the right method. It obviates patronage and cuts right across society. Under this system, everyone has an even chance of getting a commission. The mover of this amendment has already pointed out that, in the future army of India, commissions should be given on the same sort of footing as the superior appointments of the All-India Services, and, to my mind, it is imperative that we should have some equivalent of the Services Selection Board. It does not matter whether we call it a Defence Services Commission or a Services Selection Board, but, I have no doubt in my mind that there should be such a body.

Mr. Ragho Raj Singh (Eastern States): Mr. Vice-President, I would like to say a few words on the amendment that has been moved. Recruitment to the Defence Services is a highly technical matter. It should be part of the Defence organisation, and if a Defence Services Commission is set up, it would fetter the hands of the Defence organisation. So far as I know, no distinction was made even in the past regarding martial and non-martial classes in respect of recruitment to the officers' classes. The distinction was made only in regard to the ranks. During the war, a special Directorate was set up to undertake recruitment to the Services and it has developed its own technique. I think this is a matter which you should leave to the discretion of the Defence Department. If you set up a Defence Services Commission, it would fetter the discretion of the Defence organisation.

Prof. N. G. Ranga (Madras: General): Mr. Vice-President, Sir, I am very much opposed to leaving such an important matter to the mere whims of the Defence organisation. For a long time now, there has been a movement in England and many other countries on the continent that the recruitment to the Defence forces should be democratised, so that people from all ranks would be recruited to the defence forces. It has been a notorious fact that officers recruited from particular groups have not been able to give satisfaction. During the war,

[Prof. N. G. Ranga]

the recent one as well as the last one, the triumph of the allies was largely due to the officers recruited from the rank and file. If you want to give a chance to the people at large to throw up their own leadership and assure themselves that their leadership will have a chance of being recruited to the various officer cadres in the defence forces, it is most essential that a Commission should be set up as suggested by my friend, Mr. Ananthasayanam Ayyangar. It may be said by some, "Why don't you leave it to the Federal Parliament?" Sir, if you have thought it fit to make special provision in this constitution for a Public Service Commission for the recruitment of a large number of Government officials for the civil services, then certainly it stands to reason that you should make a similar provision for the recruitment of officers to the defence forces. The number of people you are going to recruit for the civil services is not going to be as many as those you will have to recruit for the defence forces. These are times when our defence forces have got to compete with the defence forces of other countries. There is one country as you all know, Soviet Russia, just on the other side of our border. Let us study carefully how the Soviet armies are being constructed, built up and strengthened, and how their officers are being recruited. Their officers are recruited from every community, caste or cadre of society, from every crevice of social life. If our defence forces are to compete with the defence forces of that country and are to acquit themselves favourably in comparison with the defence forces of that country, then it is most essential that every possible care should be taken to see that competent people capable of providing leadership in times of war are recruited in an impartial manner by a commission like the one that has been suggested by Mr. Ananthasayanam Ayyangar.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, it is true that the draft before the House makes no mention of the defence services. One reason which I can put forward for this omission is that what you find in Chapter I of Part X of the present Government of India Act of 1935 is hardly matter which can be put into the outlines of the Union Constitution which we are considering at the present moment. That particular chapter in the Government of India Act of 1935 concerns itself mainly with questions like the pay of the Commander-in-Chief, the control of His Majesty over defence appointments, the control of the Secretary of State, rights of appeal to the Secretary of State and so on. Most of these will become obsolete when we frame our new Constitution. That is perhaps one of the reasons why it was considered unnecessary to make any special provision for the defence services in the document that we are now considering. The other point which was raised by the Mover is that we should in the case of the defence services create a body on the lines of a Public Services Commission, in order to deal with the many matters connected with the recruitment and conditions of service relating to the defence services. So far as I

am concerned, I do not consider that there is any particular virtue in putting into the law of the Constitution provisions relating to the creation of our Public Services Commission even in the case of the civil services. I do not see why a Commission of that sort should not be created by Federal law. After all, what is a Public Services Commission? It makes arrangements for recruitment, it gives advice as to the personnel to be selected for appointments, it gives advice as to cases of appeal from punishment and as to the rules to be made for recruitment, conditions of service and so on. It is true that for applying those rules we create a body whose personnel is of the same independent status as that of High Court Judges in order that those rules might be observed impartially. We have made a fetish of having Public Services Commissions provided for by the Constitution Act in the case of the civil services. Any similar arrangements that may be necessary in regard to the defence services can be provided by Federal law; I cannot on the merits see any real solid objection to it. Now I would mention a further point. There is a very essential distinction between the generality of civil services and the defence services. The defence services are essentially services of discipline and even, in the civil services, I think, it has been recognised that in regard to services which would involve discipline in an intensified form, it is perhaps not so very desirable that the Public Services Commission should be brought in the matter of recruitment or in the decision of disciplinary cases. I would read to you Section 243 of the present Government of India Act which occurs in the Chapter on the Civil Services. It says:

"Notwithstanding anything in the foregoing provisions of this Chapter, the conditions of service of the subordinate ranks of the various Police Forces in India shall be such as may be determined by or under the Acts relating to those forces respectively."

What I wish to point out is that some of the matters like the distinction between martial and non-martial classes, questions relating to the representation of communities in the defence services, in the representation of Provinces in the different service—they are all undoubtedly important. But let me point out to the House that the policy relating to those matters is not a matter for decision by any Services Commission which we could set up. Policy is a matter for decision by the Government of the day. So I would suggest that if you want to eliminate injustice and questionable discrimination in regard to these particular points, you have got to tackle the Government of the day and see that they adopt a policy which is reasonable. No doubt there is the question of carrying out the policy, and I think you can by a Federal law set up a body. It may be the present Selection Boards which function in the Armed Forces at present. It may be a different body, but such bodies could be created by or under the provisions of any Federal law which we may enact in the future. So I would say that perhaps we might have a kind of general provision in the Constitution to say that the Federal law shall make due provision for matters relating to the recruitment, conditions of service etc. of the defence services and leave the rest of it to be worked out later on. I can perhaps give an assurance to the Honourable the Mover that we shall

[The Honourable Sir N. Gopalaswami Ayyangar]

try and insert a general provision of that nature in the Constitution, though it would not be on the same terms as his amendment. If he is satisfied with this, I would request him to withdraw his amendment.

Sri M. Ananthasayanam Ayyangar: It is only a matter of form and the Honourable Sir N. Gopalaswami Ayyangar is prepared to put the substance of it in some form which he considers suitable. Therefore I am not interested in pressing this before the House. I beg leave of the House to permit me to withdraw it.

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

CLAUSE 23

The Honourable Sir N. Gopalaswami Ayyangar: I move Clause 23 which reads as follows:

"Subject to the provisions of this Constitution, the Federal Parliament may, from time to time, make provision with respect to all matters relating to or connected with elections to either House of the Federal Legislature including the delimitation of constituencies."

Mr. Vice-President: There is an amendment to Clause 23 proposed by Mr. Ananthasayanam Ayyangar and Shrimati G. Durgabai.

Sri M. Ananthasayanam Ayyangar: Sir, I move:

"That the following be added at the end of Clause 23:

'The first elections and subsequent elections shall be held in accordance with the provisions of Schedule (to be attached to the constitution) and the constituencies shall be those set out in another Schedule.'"

I do not press the other sentence:

"The said schedules may at any time be modified or varied by an Act of the Federal Legislature."

I stop with the first sentence.

The need for this is this. We propose in Clause 23 that elections to the Federal Parliament may, from time to time, be regulated by Acts of the Federal legislature, including the delimitation of constituencies. I want to make provision in the constitution itself for the first elections and the first delimitation of the constituencies. We have made a silimar provision in the provincial constitution which we passed recently, a week or a fortnight ago. On the same lines, I have tabled this amendment. Therefore, I move this amendment for the acceptance of the House.

The Honourable Sir N. Gopalaswami Ayyangar: I accept the amendment, Sir, with the omission of the second sentence as agreed to by him.

Mr. Vice-President: I place the amendment before the House.

The amendment was adopted.

Mr. Vice-President: I now place the clause, as amended, before the House.

Clause 23, as amended was adopted.

CLAUSE 24

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I move Clause 24 :

"24. The superintendence, direction and control of all elections, whether Federal or Provincial, held under this constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President."

The object of this clause, Sir, is to ensure as far as possible that elections in the country, Federal or Provincial, are conducted in an impartial manner. The idea is to set up a Commission appointed by the President under whose auspices all these various aspects of election activities and post-election activities will be regulated and controlled. As the House is aware, the abuse of election procedure, of the election machinery and the prevalence of corruption in elections—these are complaints which are widely made in the country and this clause is merely an attempt to bring all these election activities under a common centralised independent control.

Mr. H. V. Pataskar: Sir, I move :

"That in Clause 24 for the words 'all elections' the words 'all Federal elections' be substituted; and the words 'whether Federal or Provincial' be deleted."

After this amendment, Clause 24 will read as follows :

"24. The superintendence, direction and control of all Federal elections held under this Constitution, including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President."

Sir, the underlying idea of this amendment is that so far as elections to the Federal legislature are concerned, the superintendence, direction and control should vest with the President; but so far as provincial elections are concerned, that should be left to the Governor of the Province or to some other appropriate authority in the province itself.

The reasons for this amendment are as follows : Sir, if we look at Chapter VII, Clause 23 relates to Federal elections, elections to the Federal Parliament. Naturally enough, Clause 24 which follows must relate only to elections to the Federal Parliament. It appears somehow, the idea must have occurred to those that were responsible for the drafting of these clauses, why not include provincial elections as well in the clause? As I could gather from the speech of the Honourable the Mover, his main argument in favour of subjecting provincial elections to the superintendent, control and direction of the President of the Federation was that that would ensure impartiality of elections. I shall deal with this argument later. But, Sir, apart from anything else this is not the appropriate place where they should make provision for the superintendence of provincial elections. In this chapter we are dealing with and could only deal with Federal elections.

There are again one or two very strong reasons why it should not be so. Up till now, we find that so far as provincial elections are concerned, their superintendence, direction and control, was in the hands of the provincial Governors. We are going to have a Governor in the province who will be elected on the basis of adult franchise and I do not understand why such a Governor should not be entrusted with this work.

[Mr. H. V. Pataskar]

Then, another difficulty is that the President of the Federation will be a person for whom it will be very difficult to either superintend, direct or control elections in far off provinces. That could be done better by those who are in the province itself. The President of the Federation will already have so many duties with him that I do not think it proper that he should be burdened with the hability of superintendence, direction and control of provincial elections.

Then, the only point that was made by the Mover of this clause was that it was only intended for the purpose of having impartial elections. I do not understand how it would make any difference whether the superintendence is with the President of the Federation or with the Governor of the province in this matter. They can be impartial in both the cases if sufficient care is taken. With these remarks, Sir, I commend this amendment for the acceptance of the House.

Shri T. Prakasam (Madras: General): Sir, I would like to support this amendment. The provinces need not be tied down to the Centre in regard to this matter. The provinces have been able to conduct very big elections both in 1937 and in the recent one. The coming elections will be . . . .

Shri Ram Sahai (Gwalior State): *[Mr. Vice-President, I raise a point of order. Neither all of the amendments have been moved as yet, nor have you allowed members to speak on the original resolution or amendment. Under such circumstance how is it possible for Shri Prakasam to commence his speech?]*

An Honourable Member: Let all the amendments be moved first.

Mr. Vice-President: I agree that it would be better to allow all the amendments to be moved first.

Amendment No. 345. Mr. Muniswami Pillai and others.

Shri V. I. Muniswami Pillai: Sir, we are going to have elections on adult franchise. I feel it necessary that the representatives of the Schedule Castes and other minority communities ought to be represented in the Tribunal that would be set up but as I understand that the rules will be made later on, for these matters, I do not propose to move this amendment just now.

(Amendments Nos. 346, 347 on List II and No. 20 of Suppl. List I were not moved.)

Shri T. Prakasam: Sir, the amendment proposes that the Provinces should be left out from the clause and that is the correct position that should have been taken. I do not know why the Provinces have been brought into this clause. It is quite unnecessary for the Provinces to be tackled on to a Commission that might be appointed by the Centre. The Provinces have been able to carry on their work in every respect without any trouble. Very big elections had been fought out in the past both in 1937 and in recent 1946 elections. Therefore it should not be considered necessary that the Provinces should be brought into this and made to depend upon the Centre's organization. The future elections, Sir, as we all know, that are going to be fought out on adult franchise would be of very great importance and of very great magnitude. Provinces must be left

[ ] English translation of Hindustani speech.

perfect freedom to carry on this work by themselves as they have been doing hitherto. It is impracticable that the Central organization should be thinking of supervising the work in the Provinces. The Centre has got enough of work in every Department and particularly with regard to this also. Therefore, Sir, there is no need to argue very much on this matter. The Provinces must be excluded as stated in the amendment. Sir, I should like to support this amendment. The Provinces need not be tied down to the centre in regard to this matter.

Dr. B. R. Ambedkar (Bombay: General): Mr Vice-Chairman, I think it is desirable that I should state to the House the origin of this clause. Although this clause appears in the Constitution which deals with the Union, as a matter of fact this matter was dealt with by the Fundamental Rights Committee. The Fundamental Rights Committee came to the conclusion that no guarantee regarding minorities or regarding elections could be given if the elections were left in the hands of the Executive of the day. Many people felt that if the elections were conducted under the auspices of the Executive authority and if the Executive Authority did have power, as it must have, of transferring officers from one area to another with the object of gaining support for a particular candidate who was a favourite with the party in office or with the Government of the day, that will certainly vitiate the free election which we all wanted. It was therefore unanimously resolved by the members of the Fundamental Rights Committee that the greatest safeguard for purity of election, for fairness in election, was to take away the matter from the hands of the Executive authority and to hand it over to some independent authority. Although Clause 23 does not specifically refer to the details of the scheme that was considered in the Fundamental Rights Committee, I should like to state to the House that the Scheme that was in the minds of the members of the Fundamental Rights Committee was that there would be a Central Commission appointed by the President in order to deal with the elections throughout India. Although that was the scheme contemplated that there should be a Central Commission appointed by the President to superintend, direct and control elections, it was never contemplated that there would be only one Commission sitting in Delhi or at some centre where the Central Government was seated. The scheme was that there would be one Central Commission which probably would deal with the elections to the Federal Parliament but that the Commission would have also subordinate to it a Commission in each Province or, if a Province was too small, to have a single commission, for two or three provinces combined together, so that their affairs so far as elections were concerned, may be carried on by a Local Commission. From the very beginning the idea was that this thing should be decentralized. There should be one Central Commission for Federal election and there should be several Commissions for the elections conducted in the various Provinces. My submission is this that if that scheme comes into operation, the point which my friend Mr. Pataskar has in mind in moving the amendment would be gained, because so far as I understood from him, what he wanted was that there should be a local authority or a Local Commission which would deal and be concerned with elections in that Province. I think that was our intention although that scheme has not been mentioned in Clause 24. That undoubtedly was the matter we had in mind. However, if my friend Mr. Pataskar still persists in putting his amendment through, I would

[Dr. B. R Ambedkar]

like to ask him one question which remains a matter of doubt when you read the amendment as drafted by him. He wants to omit the words 'all elections' and substitute the words 'all Federal elections'. I have no very great objection to his amendment provided he satisfies me on one point. I want to ask him whether or not he accepts the principle—and after all what we are concerned with is the principle—what I want to ask him is this—does he accept the principle that elections should be placed in the hands of an independent body outside the executive? If he accepts that, personally, as I said, I will have no objection if it is agreed by the House that a similar clause which is contained in Clause 24 be introduced in the Provincial Part of the Constitution. I have no desire for centralization. What we had in mind was that the elections should be taken out of the hands of the Government of the day.

Mr. H. V. Pataskar: Before we proceed further with the discussion, I would like to make it clear as the Mover of this amendment that I entirely agree with my friend Dr. Ambedkar that the superintendence, direction and control of elections should be beyond the scope of any executive authority and should be in charge of some independent authority and provision can be made in that behalf in the Provincial constitution.

Shri K. Santhanam: I think the clause as it stands is too wide. What do we mean by elections? First of all, we have to prepare the electoral rolls. Secondly, at the time of the elections, we have to arrange for polling booths and polling officers. Then comes the taking of ballot papers, counting them and so on. I think especially when we have universal adult suffrage the entire machinery of the Provincial Government will have to be harnessed to carry out these elections. Therefore, unless the final executive authority is in the hands of the Government, no independent Commission can control the entire Provincial Government in all its stages. Certain aspects like election tribunals or consideration of the qualifications of candidates or the objections to nominations can be handed over to an independent body, but elections as a whole cannot be handed over to it, I think if any attempt is made to hand it over either in the case of Central elections or in the case of Provincial elections, to an independent Commission it will not function at all. It will not be capable of managing it, because in these days elections mean that the entire resources both administrative and financial of the Governments concerned have to be utilised. Therefore, when the time comes for drafting, these matters will have to be looked into very closely and the powers, or rather, the functions of the Commissions should be narrowly fixed and limited to those things which should be entrusted to a judicial authority and not to an executive authority. It should be really a judicial commission and not an executive commission. Executive functions should be entrusted to the normal Government of the day while all such matters as have to be disposed of in a judicial manner only should be entrusted to the Election Commission. Otherwise, the whole scheme would be a failure.

Shri Biswanath Das (Orissa: General): Sir, the clause as it is leaves certain powers with the Provinces. The superintendence, control and direction of elections are left with the Federal Authority that

is to be appointed hereafter under the new constitution. It would be absurd and impossible for any authority except the Province to think of conducting elections without the co-operation of the Province. I would request Honourable Members of this House to visualise the conditions in which elections are held, including preparation of rolls—the taking of buildings required for the purpose, the posting of polling booths and the like. All this has to be done by the Provincial Government. No Federal authority, however powerful it may be, could take on all these responsibilities. Added to this, Sir, the co-operation of Provincial officials is also necessary. No Federation could undertake these responsibilities. People who are conversant with these elections will readily agree that it is not possible for any Federal authority and much less a Commission to undertake these responsibilities. Under these circumstances, it is necessary that the Provinces should be left in charge of the conduct of elections and it is necessary. I would agree and go to a certain extent with Dr. Ambedkar in his claim that the control and superintendence of these elections be entrusted to some tribunal or to a Central authority to keep a watchful eye over them. Having had bitter experience of these elections, both in local bodies and in Provincial Assemblies in certain places and in provinces, we know how awful it would be to leave the entire thing to the Provinces, especially when we are to have the future elections run on party lines. Under these circumstances, it is necessary that a distinct division should be kept in view, namely, that the Provinces should conduct the elections and the Central Authority should have a watchful eye over the superintendence and control of these elections.

A word about the Election Tribunal. Sir, cases have come to our knowledge and it is within our experience that Ministries and Governors of Provinces under the advice of Ministries have not been fair even in instituting proper tribunals in some places. They have been utilised for party purposes to inconvenience opposition parties. It is therefore fair that such tribunals should be appointed independently by this Commission or by a separate and independent authority like the Federal Court. It is thus fair to give the Federation control over the elections, but to say that the elections should be solely and wholly conducted by the Federation is an impossibility, and in fact, beyond the power and scope of any Federation or Tribunal to undertake. Under these circumstances I would appeal to Dr. Ambedkar to agree to the acceptance of a part of his amendment by the Mover himself.

Mr. Satyanarayan Sinha (Bihar: General): I move that the question be now put.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Deputy President. . . .

Mr. Vice-President: Closure has been moved.

Mr. Naziruddin Ahmad: Sir, I submit that the principle applicable to a closure motion is that there has been reasonable debate and its acceptance is dependent upon the approval of the House. The House has not been consulted. I shall, however, be extremely brief as I have ever been in this House.

Sir, I rise to support the amendment. Dr. Ambedkar has given an interesting psychology about the history of this provision. He has

[Mr. Naziruddin Ahmad]

asked a very legitimate and straighforward question, as to whether a body that is to be set up to decide election disputes would be an independent body. Mr. Pataskar has agreed with him and I also agree with him. But I would ask Dr. Ambedkar and people of his way of thinking whether in a Province a sufficiently independent body is not available. I think the speech of Dr. Ambedkar breeds suspicion about the ability and independence of the Provinces. Are not the judicial tribunals in the Provinces independent, and is not our judiciary to be trusted? I submit that the Provincial authorities are well aware of the local conditions under which elections are held. I beg to submit that High Court Judges or other members of the Judiciary selected by the Provincial authorities may be safely left to deal with this matter. In my opinion, the treatment by the Centre of the Provinces in some respects is rather stepmotherly. There is too much interference, too much of suspicion about the ability of the Provinces. Sir, I support the amendment.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, on the essentials, we are all agreed and I am prepared to accept the amendment which has been moved, that is to say, this clause in the Union Constitution should be limited to federal elections. I wish to point out in this connection only one fact, and that is, that the Advisory Committee on Minorities made the following recommendation:

"The superintendence, direction and control of all elections to the legislature whether of the Union or of a Unit including appointment of election tribunal shall be vested in an election commission for the Union or the Unit as the case may be, appointed in all cases in accordance with the law of the Union."

Now that envisages the appointment of a separate Unit Commission for looking after elections in the Unit, in addition to a Union Commission which will look after Federal elections; and this particular recommendation, I find, was approved by the House when it considered the Model Provincial Constitution. The statement of principle in this paragraph was endorsed by the House.

As regards the point mentioned by Mr. Santhanam, that this might encroach on the legitimate sphere of the executive in the different areas, I need only point out that what this clause provides for is only superintendence, control and direction. The actual conduct of elections, the executive machinery that may be required for conducting them and so on will have to be mobilised through the respective provincial governments. The superintendence or control will come in for instance, in regard to the location of polling stations or the selection of polling officers, methods of voting and the safeguards that have to be provided for any breach of the principle of secrecy in the ballot and so on. It is necessary that matters of this sort are properly and impartially done. Otherwise they may lead to injustice, corruption and so on. Such matters should, therefore, be in the hands of an impartial tribunal of this description. Sir, I accept the amendment.

Mr. Vice-President: Amendment No. 344 proposed by Mr. Pataskar is before the House:

"That in Clause 24 for the words 'all elections' the words 'all Federal elections' be substituted; and the words 'whether Federal or Provincial' be deleted."

The amendment was adopted.

Mr. Vice-President: Now, I place before the House the Clause 24 as amended.

"The superintendence, direction and control of all Federal elections, held under this Constitution, including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President."

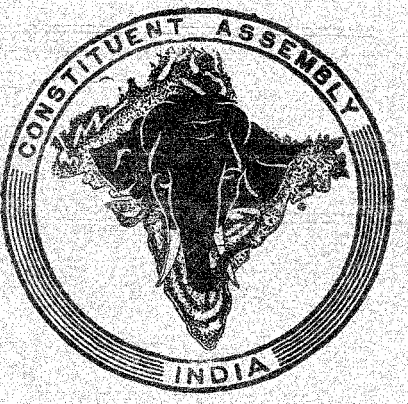
Clause 24, as amended, was adopted.

Mr. Vice-President: We shall now adjourn to 10 o'clock, tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 30th July 1947.

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CONSTITUENT ASSEMBLY DEBATES

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 30th July 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 the Register :

Mr. Mukunda Bihari Mullick (West Bengal : General).

DURATION OF AUGUST SESSION

Mr. H. V. Kamath (C. P. & Berar : General) : Mr. President, will you be so good as to tell us how long the August session is expected to last, so that we may be able to adjust our programmes accordingly ?

Mr. President : As Members are aware, we are going to have a function on the 15th August and Members will be expected to be present here on that day to join that function. Then 16th happens to be a Saturday and 17th a Sunday on which days we do not ordinarily sit. The 18th and 19th will perhaps be *Id* days and we cannot sit on those days either. So the next day on which we can sit would be the 20th, and then it depends upon Members as to how long they will take to complete the work. The business to be completed will be the consideration of the reports of the Union Powers Committee and the Advisory Committees ; and if anything is left over from now—which I hope will not be the case— that will have to be completed then. There may be some other items also but these two will be the main items for consideration and I hope it will not take more than seven or eight days to complete these two items.

An Honourable Member : What about the Minority Committee's report ?

Mr. President : That is included in the Advisory Committee's Report.

Prof. N. G. Ranga (Madras : General) : What about the clauses relating to the provinces and the Indian Union which have not yet been disposed of ?

Mr. President : We shall try to complete consideration of this report if possible, but if anything is left over we shall have to take it up then.

Shri M. Ananthasayanam Ayyangar (Madras : General) : I would like to make a suggestion that as 18th and 19th will be holidays we may sit on the 16th and 17th even though the latter is a Sunday. It is only a sentimental objection and in view of two holidays following we may sit on Sunday.

As regards the amendments I suggest that copies may be sent round soon after we reach home so that we may come prepared to discuss them.

The Honourable Mr. B. G. Kher (Bombay : General) : The best course would be to sit from the 20th to the end of the month.

Mr. President : That is what is intended.

Pandit Shri Krishna Dutt Paliwal (United Provinces : General) :

*Mr. President, perhaps Independence Day would be celebrated on the 16th and after meeting on the 15th here most of the members would like to go back to their respective places in order to participate in celebrations at their places. Hence it would not be possible to work on the 16th.

Mr. President:*—What do you desire ?

Pandit Shri Krishna Dutt Paliwal:*—Sir, as most of the members would like to go back to their respective places, I wish that no work should be done on the 16th.

Mr. President:*—those who wish to go back might do so. We will resume our work from the 20th.

REPORT ON THE UNION CONSTITUTION

PART IV—CHAPTER I—CLAUSE 7

Mr. President : We shall now take up the discussion of the clauses that have been left over. Clause 7 is one such clause the discussion of which has been left over. I understand that there is an agreed substitute to Clause 7 in the draft. Is that ready, Sir Gopalaswami Ayyangar ?

The Honourable Sir N. Gopalaswami Ayyangar (Madras : General): Sir, I have given notice of an amendment to Clause 7 (2) (b); but there is still some little trouble about that. I think I shall be in a position to place the amendment before the House tomorrow morning after drafting the amendment in a form which may be acceptable to both parts of the House.

Mr. President : Then we shall pass that over and take up Part V.

The Honourable Sir N. Gopalaswami Ayyangar: There is another Clause which we have held over and that is Clause 14. About that also I hope to be in a position to place before the House a kind of agreed proposal tomorrow morning.

Mr. President : The House will in that case take up consideration of Part V.—Distribution of Legislative Powers between the Federation and the Units. In regard to this, as I understand it, though there is no specific amendment here, there is a suggestion made on behalf of the Ministers of the States that this might be held over until we have discussed the Report of the Union Powers Committee. Is that the idea ?

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* English Translation of Hindustani speech.

Sir B. L. Mitter (Baroda State) : That is so. I have got an amendment to it.

Mr. President : Is it necessary to move that amendment now ? I think we can hold over the consideration of Part V.

The Honourable Sir N. Gopalaswami Ayyangar : We have no objection to have it postponed.

Mr. President : I take it that it is the wish of the House that the consideration of Part V be postponed until we have disucssed the Report of the Union Powers Committee.

The House will now take up Part VI for consideration.

PART VI—CLAUSE I

The Honourable Pandit Jawaharlal Nehru (U. P. : General) : Sir, I beg to move :

"1. The Federal Parliament in legislating for an exclusively Federal subject may devolve upon the Government of a Unit whether a Province, an Indian State or other area, or upon any officer of that Government, the exercise on behalf of the Federal Government of any functions in relation to that subject"

This is a very simple province which hardly needs any words me to commend it.

Mr. President : Rai Saheb Raghuraj Singh has an amendment to this Clause. Does he move it ? The Member not being present the amendment is not moved.

(Shri V. I. Muniswami Pillai did not move his amendment No. 362.)

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I beg to move :

That in sub-clause (1) of Clause 2, for the words 'which applies to that Unit' the words in so far as it may be applicable to the Unit', be substituted.

I have another amendment. That is for Clause 2.

Mr. President : The Honourable Pandit Nehru has moved only Clause 1. Only amendments to Clause 1 can therefore be moved now.

Mr. Naziruddin Ahmad : Mine is only a drafting amendment.

Rai Bahadur Lala Raj Kanwar (Eastern States)—Rai Saheb Raghuraj Singh has just arrived, but I am prepared to move the amendment. I beg to move that for Clause 1, the following be substituted.

"1. The Federal Government may, with the consent of the Government of a Province or the Ruler of a Fedrated State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends.

An Act of the Federal Legislature which extends to a Federated State may confer powers and impose duties upon the State or officers and authorities there of to be designated for the purpose by the Ruler. "

Mr. Tajamul Husain (Bihar : Muslim) : On a point of order, Mr. President, when the member who has given notice of an amendment in the House, can another member move the amendment ?

[Mr. Tajamul Husain]

Mr. President: Both the members have signed the amendment. He is, therefore, perfectly in order in moving the amendment.

Rai Bahadur Lala Raj Kanwar: Sir, the wording of the amendment which has just been moved by me is based upon the wording of the Government of India Act, 1935, Section 124, sub-sections (1) and (3). It contemplates that whenever any functions in relation to a matter to which the executive authority of the Federation extends are made exercisable by a provincial government or the Ruler of a State or by their officers, it should be done with their consent and not independently, and that the State officers should be designated by the Ruler and not by the Federation. Sir, the necessity for this amendment is that the delegation of functions to a Provincial or State Unit should be made with their consent and particularly in the case of Indian States, the officers to be designated for the exercise of these functions should be chosen by the Ruler. I, therefore, commend this amendment for the consideration and acceptance of the House.

Mr. President: Does anyone else wish to speak on the clause or the amendment? Both of them are under discussion now.

Rai Saheb Raghuraj Singh: (Eastern States Group 2): Mr. President, Sir, the delegation of federal authority has already been agreed to in an earlier clause, *viz.* Clause 9. It has also been agreed that such delegation may be withdrawn in the discretion of the federation. The amendment which has just now been moved merely says that whenever delegation is made by the Federal Government to a State, it should be done with the consent of the State, and that the exercise of the delegated powers should be through an agency which should be approved by the State Government or the Ruler.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, this amendment practically repeats what is contained in Section 124 of the Government of India Act, 1935. Clause 1 which has been moved was intended to give the substance of Section 124. There are however two points which have been mentioned by the mover and the supporter of this amendment which deserve some examination. The first point, as I understood it, was that the devolution of functions of administration in relation to federal subjects upon provinces or States should be with the consent of the Governments of those provinces or States. The second point was that the designation of the officers of an Indian State who are to exercise the authority devolved upon them by the Federal Legislature should be by the Ruler or with his consent. I may at once say that whenever there is a proposal to devolve functions of this sort either on provincial or State Governments, or the officers of those Governments, there is bound to be previous consultation between the Centre and the Units concerned. We have got to recognise the fact that, after all, the functions proposed to be devolved are functions in relation to the administration of federal subjects. The authority for providing for executive administration of federal subjects has to be the Centre finally. We could provide for consultation, but I think, Sir, it would be going against the root principles of the exercise of executive authority

in relation to federal subjects if we stipulate that the consent of the Unit Government or the head of that Unit Government should be a condition precedent to such devolution. The substance of what the amendment wants will certainly be recognised by the future Federal Government. Before such devolution is made either by executive action or under federal laws, the fullest consultation will take place between the Centre and the Unit. I am, therefore, Sir, not in a position to recommend the acceptance of this amendment.

Rai Bahadur Lala Raj Kanwar: In view of the assurance given by Sir Gopalaswami Ayyangar, I withdraw the amendment.

Mr. President: I will now put the clause to vote. As regards the amendment, the mover wishes to withdraw it. I take it that the House gives him permission to withdraw it. I will now put the original clause to vote.

Part VI. Clause 1 was adopted.

CLAUSE 2

The Honourable Sir N. Gopalaswami Ayyangar: Clause 2 reads as follows:

"(1) It will be the duty of the Government of a Unit so to exercise its executive power and authority in so far as it is necessary and applicable for the purpose as to secure that due effect is given within the Unit to every Act of the Federal Parliament which applies to that Unit: and the authority of the Federal Government will extend to the giving of directions to a Unit Government to that end.

(2) The authority of the Federal Government will also extend to the giving of directions to the Unit Government as to the manner in which the latter's executive power and authority should be exercised in relation to any matter which affects the administration of a Federal subject."

These two sub-clauses really repeat in substance the provisions of the Government of India Act of 1935. These are intended to prevent any clash of authority between the Centre and the Units. They are also intended to secure that the Unit Governments will so exercise their own executive authority, that is to say, their executive authority in relation to Unit subjects, as not to come into conflict with the exercise of executive authority in relation to federal subjects. I do not think, Sir, that any more explanation is needed. Sir, I move.

Mr. Naziruddin Ahmad: I move:

That in sub-clause (1) of Clause 2, for the words 'which applies to that Unit' the words 'in so far as it may be applicable to the Unit,' be substituted.

Sir, may I also move amendment No. 365?

Mr. President: Yes.

Mr. Naziruddin Ahmad: My other amendment is:

"That in sub-clause (2) of Clause 2 for the words the 'Unit Government,' the words 'Unit Governments', be substituted."

I submit, Sir, these are only drafting amendments and are put in by way of suggestions for the Drafting Committee.

(Messrs. Thakur Das Bhargava, K. Santhanam and P. S. Deshmukh did not move their amendments Nos. 364, 366 and 367.)

Rai Sahib Raghuraj Singh: I move that the following new Clause be inserted after Clause 2 :

"3. Where by virtue of Clause (1) powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of the Supreme Court in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties."

The object of this amendment is obvious, *i.e.*, that whenever any duties are imposed on a State or Province or Federated State, the cost of carrying out of those duties should be paid to the State or Province concerned.

Mr. President: There is no other amendment to this Clause. So the clause and amendments are now open to discussion. Those who wish to speak may do so.

Shri Ram Sahai (Gwalior State): *[Mr. President, I beg to support the amendment submitted by the Rai Sahib. My submission is that the amendment is very proper and necessary. The Government of India Act, 1935, Section 124, sub-section (1), provides for "power of the Federation to confer powers on the Provinces and States with the consent of the Government of a Province or the Ruler of a Federated State". But these words have been deleted from this clause. In order to strengthen the Centre it was proper to invest the Federation with such power without their consent. But in no case is it proper to delete sub-section (4) of Section 124 of the Government of India Act. Rai Sahib has pressed his amendment on the basis of this very sub-section. I, therefore, consider it Proper for the House to accept the amendment. By accepting it, the Provincial Government or the State would be able to recover the expenses incurred on behalf of the Centre. In order to consolidate the economical position of the Provincial Government or the State, it is essential that such sort of expenses should be paid to them. For this reason I support this amendment.]*

Rai Bahadur Lala Raj Kanwar: The amendment which I have the privilege of supporting needs no elaborate argument and it is self-explanatory. All that it aims at is to make a statutory provision for the payment of the cost of administration by the Federation to a Federal Unit, when the administration of a Federal subject is entrusted to that unit. As this provision is very necessary and it also finds a place in the Government of India Act, section 124, sub-section (4), it is suggested that it is a necessary provision and may be incorporated in our Constitution. At present the recommendations of the Constitution Committee do not mention anything about the payment of the cost of administration in such cases. As this seems to be a necessary provision, it is recommended for acceptance by the House.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, of the two amendments moved by Mr. Naziruddin Ahmad, the first one is to substitute the words "in so far as it may be applicable to the Unit" for the words "which applies to that Unit". It is apparently a suggestion for improving the drafting of this particular sub-clause, and whether it is an improvement or not, it is difficult to say. I think the

* [ ]*English translation of Hindustani speech.

essential purpose of the sub-clause is served by the present drafting as by the amendment that is proposed. I would leave the clause as it stands. I therefore do not accept that amendment.

His second amendment that the words "Unit Governments" be substituted for the words "the Unit Government" I accept. Then the only other amendment to this Clause is Item No. 368. This is taken from section 124, sub-section (4) of the Government of India Act. When the outlines of the Constitution were drafted for the purpose of discussion in this House, it was not considered necessary that all the consequential powers or provisions that may be necessary should be included in this draft. The omission of this particular sub-section of 124 was not motived by any desire to do away with that provision when the final draft comes to be made, but, as this particular clause has been moved as an addition to the present clause, I accept it and will go into the text of the future Constitution.

Mr. President: I will put the amendments first. The first amendment is by Mr. Naziruddin Ahmad:

"That in sub-clause (1) of Clause 2, for the words "which applies to that unit", the words 'in so far as it may be applicable to the Unit' be substituted."

The amendment was negatived.

Mr. President: The next amendment is:

"That in sub-clause (2) of Clause 2, for the words 'the unit Government' the words 'unit Governments' be substituted."

The amendment was adopted.

Mr. President: The last amendment is that the following new Clause 3 be inserted after Clause 2:

"3. Where by virtue of Clause (1) powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement as may be determined by an arbitrator appointed by the Chief Justice of the Supreme Court in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties."

The amendment was adopted.

Mr. President: The clause, as amended, is now put to the House.

Clause 2 as amended was adopted.

Mr. President: There is notice of another amendment that another clause should be added. That is given notice of by four members.

Sri. H. R. Guruv Reddy (Mysore State): I beg to move this amendment:

"That after Clause 2, the following new clause be added:

'3. It shall be competent for an acceding State with the previous sanction of the Federal Government to undertake by an agreement made in that behalf with any Governor's Province or Chief Commissioner's Province or any other acceding Indian State any legislative, executive or judicial functions vested in that Province, Chief Commissioner's Province or other acceding State, provided that the agreement relates, so far as Provinces or Chief Commissioners' Provinces are concerned, to a subject included in the Provincial or Concurrent Legislative List and so far as the other acceding State is concerned to a subject not included in the Federal List.

[Sri H. R. Guruv Reddy]

"On such an agreement being concluded the State may, subject to the terms there of exercise the legislative, executive or judicial functions specified therein through, the appropriate authorities of the State."

Sir, this is a counterpart of Clause 8 of the Report of the Provincia Constitution Committee. This august House was pleased to accept the Report of the *ad hoc* Committee on Clause 8 of Part I of the Provincial Constitution which provides that any Provincial Unit could take over and administer any portion of any State Unit under it. Similarly, a clause which enables the State Unit to take over and administer parts of other Provinces is moved now in this Clause.

Sir, it is but just and fair that once power is taken to take away a portion of a State or a State Unit for administrative purposes, a State which is competent and capable similarly to administer should be allowed that freedom of taking a portion of another Province for similar administration by itself. There need be no doubt in any quarter that it is not a fair and just clause to be introduced.

Sir, there are certain limitations here. First of all, it should be with the previous sanction of the Federal Government which is all powerful. There is no fear of any sort that any such agreement would be rushed through by any two interested parties without first of all coming before the Federal Government and taking its consent. Next, there is another limitation imposed, namely, that there should be a competent agreement under which this action could be taken, if at all. Therefore, unless and until these two portions of this amendment come into operation no such administrative control could be taken over by a State as a matter of course.

Sir, it is but just and right that this House having passed Clause 8, as amended in the Provincial Constitution, should allow that freedom to the States also. It provides nothing more than this.

Mr. K. M. Munshi (Bombay: General): Sir, I move that the consideration so far as this proposition is concerned should be adjourned. The reason is very simple. In considering the Provincial Constitution, the House decided that there should be a similar power given to a Province with regard to the States and in fairness it would appear that a corresponding power should be given to the States. But, at the same time till the Union Powers are discussed and considered and the House is in a position to judge as to the nature and scope of the subjects for which the States are coming, it would be premature to consider this proposition. This clause stands by itself. It is not in the nature of an amendment, but an independent proposition. Any discussion of its merits, at the present stage, I submit, will not be very desirable. I therefore submit, Sir, that consideration of this should be postponed till after the Union Powers Committee's Report is discussed by the House.

Shri Gopikrishna Vijayavargiya rose to speak.

Mr. President: Do you want to speak on the main amendment or on the suggestion of Mr. Munshi?

Shri Gopikrishna Vijayavargiya (Gwalior State): On Mr. Munshi's suggestion.

Sir, I come from a State. I am dead against the amendment that has been proposed. (*Hear, hear.*) As long as there is dissimilarity between the political situation in the States and the Provinces, the States should not be given any further rights or any such rights as are proposed. But, as this is a controversial subject, as Mr. Munshi says it ought to be postponed ,I think it ought to be postponed.

Shri R. Guruv Reddy: I have no objection to its postponement.

Mr. President: The suggestion is that the discussion of this Clause be postponed till after we have discussed the Union Powers Committee's Report. Is it the desire of the House that this should be postponed ?

Many Honourable Members: Yes.

Mr. President: It is postponed.

Mr. President: Mr. Ananthasayanam Ayyangar, you gave notice of a proposition that another clause be added—in Supplementary list.

Shri M. Ananthasayanam Ayyangar: I am not moving it. Srimati Durgabai also is not moving it. I do not move my amendment No. 5 in Supplementary List No. IV.

PART VII

Mr. President: We shall now take up Part VII.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, this is a very important part of the Constitution we are considering. The first two clauses raise issues of far reaching importance and if you agree, Sir, and the House agrees, I would ask for permission to postpone the moving of Clauses 1 and 2 to the next session. In doing so, I wish only to say that it will be necessary for us to get more particulars ready under Clause 2 particularly before we shall be in a position to answer all the criticisms that may be levelled against the clauses as they stand. It has been in the minds of the framers of these clauses that we should set up an expert committee on finance which will give a detailed investigation and submit proposals which could be embodied in the text of this constitution. I hope, Sir, it will be possible for them to request you to appoint a Committee of this sort so that that Committee's report will be available to us before the next session or soon after we commence that session. Sir, if you agree, I request permission not to move Clauses 1 and 2.

CLAUSE 3

Mr. President: You may proceed to Clause 3.

The Hon'ourable Sir N. Gopalaswami Ayyangar: Clause 3 , I move:

"The Federal Government will have power to make subventions or grants out of Federal revenues for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws."

This is intended to enable the Federal Government to subsidisre activities within the range of provincial functions, or, to put it more accurately, outside the range of Federal functions. A power of this sort is necessary in order to enable the Federal Government to use revenues which are primarily raised for meeting the expenditure on Federal administration for items of expenditure which will not ordinarily all within that field. This liberty to do so will also be helpful in another

[The Honourable Sir N. Gopalaswami Ayyangar]

way. There are various developmental activities in different directions which the units will have to take up and the units may not have adequate finance for meeting the expenditure on these activities. It will be necessary, I think, for the Federal Government to sanction subventions in aid of such developmental activities though they are purely within the provincial sphere. In the interest of the development of the country as a whole, this power in the Federal Government is a very necessary weapon for them to have.

Mr. President: Mr. Omeo Kumar Das has given notice of an amendment.

Shriyut Omeo Kumar Das (Assam: General): Sir, I am not going to move the amendment that stands in my name. I am more interested in Clause 2 the discussion of which Clause has been postponed to a later date and we are assured that an Expert Committee will investigate the whole problem. I hope and trust that our province will certainly get a fair deal from that Committee but I would like to make a few general observations on Clause 3 if you will permit me to do so, after all the amendments are moved.

Mr. President: Yes, we will take Clause 3 and the amendments thereto first. If you wish to take part in the discussion, you may do so later.

(Messrs. H. V. Pataskar, T. A. Ramalingam Chettiar, H. J. Khandekar and Rev. J. Nichols-Roy did not move amendments Nos. 375, 376, 377 in the main list and No. 23 in Supplementary List I.)

So far as I can see there is no other amendment to Clause 3. The Clause is open for discussion.

Mr. B. Das (Orissa: General): Sir, I agree with Sir N. Gopalaswami Ayyangar that this is the most important chapter of the Union Constitution that has been placed before us. Sir, in the Fundamental rights we have not yet ensured that there should be social security for all. Social security means social justice for all and there should be certain minimum adequate standard of living for all. There should not only be public health and public safety, there should also be minimum education ensured for all. Unfortunately, Sir, we had an alien Government which lived for British domination. Its financial and economic policy was to take all it could take to maintain British Imperialism and British domination not only in India but throughout Asia. It gave nothing to the Provinces. If it gave to the poorer provinces like Orissa or Assam anything, it was just a sustenance allowance and nothing more. The British accession to India meant only expansion of British trade and commerce and there was development and prosperity only in ports like Calcutta, Bombay, Madras and Karachi, and all communications led to these ports and hence these Provinces became so prosperous. Provinces that came later, I mean my own province of Orissa or even Assam, they were victims of circumstances like a poor man's home where children often come and they are not wanted by the parents because they cannot equip them properly for life or give them proper food or proper education.

Sir, I am sick of hearing in this House that in certain respects we are following the Government of India Act, 1935. Those of us who opposed the enactment of that Act and those of us who knew stage by stage how the stranglehold of Britain and the autocratic British Government was being perpetuated in the Government of India Act, feel ashamed and humiliated to hear that today when we are coming to Free India or Dominion India within a fortnight or so, we are trying to frame a constitution for India on the lines of the Government of India Act that perpetuated these stranglehold on India and postponed the formation of the Federal Government from 1935 to 1947. Sir, these few sections that we find in the Government of India Act,—Sections 136 to 149—about finances and borrowing, about subventions and grants-in-aid were not inserted with any intention of securing social security and social justice to the people of the Provinces that came into existence accidentally. We have seen how these sections were flouted when the World War II came in 1939. By a particular section, section 126 (a) which was passed in 1939, all the Provinces, all the Provincial resources and all the people of India were made the hand-maidens and slaves of the British Government, so that the soldiers of India could help the British Government to fight this war and achieve victory at the cost of India. We know what happened. Nearly Rs. 5,000 crores worth of material were sent out of India to Britain and her allies at controlled pre-war rates and in the same way India was robbed of her food and the result was that 50 to 75 lakhs of people died in Bengal of famine and starvation. Another result was inflation. That was the social security and social justice that the Government of India Act gave us.

To me, Sir, it is painful that in the Preamble of the Union Constitution it has not been clearly laid down that the objective is to maintain peace and well-being of the people and bring prosperity to the people of India—it has not yet been defined ; I believe and I hope it will be defined. But I think it should be laid down that the first function of the State is to see to the well-being of the people,— not to rule as the British Government have so long ruled and exploited India for England's benefit and for India's misery and death. Therefore, Sir, I am glad to hear from Sir Gopalaswami that a Financial Inquiry Committee will be appointed. But I hope such a Committee would contain not only eminent lawyers but also financiers, economists, etc., who can lay down what is the minimum standard of social security that India's present over-burdened and over-saddled financial and economic conditions will warrant for the people of India. In Part V we have provided for a strong Centre, but is it the duty of the Centre only to have administrative functions and legislative functions ? I would very much like that the Union Powers Committee contained also men with knowledge of high economics and finance. I know that my friend Pandit Govind Ballabh Pant was in it and he is of course a financial expert, but there might well have been others. It is social justice and social security that we want. The Administration is of course going on. I am sorry to express this view, but I have come to the conclusion that the Union Constitution has not lightened the

[Mr. B. Das]

administrative rigour that was in the Government of India Act. Of course, they will bring the final Union Constitution before us and we shall examine it in October; but judging from the tendency of speeches that we have listened to in this House by our leaders and the members of the Union Powers Committee, I find that they want power—administrative power, legislative power and so on. But these are only the tools for the contentment and happiness of the millions by maintaining peace and tranquillity in the country. It is the financial and economic chapter of the Union Constitution that will show what these people really mean,—whether they want to ensure social justice or whether they want to evolve another bureaucratic government where power politics will dominate. Those who are in power whether they be my brothers or cousins, are bound to exercise their power in the same way as the British did. The reason is that most of us have grown old in the British tradition. It is very difficult, Sir, to discard that tradition and suddenly visualise democratic principles, so that we may render social justice and secure social security for our teeming millions. I therefore welcome the Union Powers Committee Report, which also will be discussed in the August Session. There I find the Committee members have gone a stage further than the draft of this Union Constitution Committee. There they say : (*vide* para 6 of 2nd report). (*Interruption*).

Mr. President: I do not wish to interrupt the Hon'ble Member, but may I remind him that we are discussing Clause 3 now? It relates to subventions.

Mr. B. Das: I know, Sir. It is on that question I am talking. That clause talks of giving charity to the Provinces. I do not want any charity. I am merely reading out what the Union Powers Committee have said on this point, because that explains their attitude.

They say :

"It is quite clear, however, that the retention by the Federation of the proceeds of the taxes specified by us would disturb, in some cases violently, the financial stability of Units and we therefore recommend that provision should be made for an assignment or a share of the proceeds of some of these taxes on *a basis to be determind* by the Federation *from time to time*."

Sir, whether it is the Finance Minister, or the President or the Federal Government, or whoever gives subvention or charities or grants-in-aid—I do not want that. I want that it should be statutorily provided for in the Constitution Act. My friend Sir Gopalaswami has told us that there would be an Expert Committee. But I would like that these grants-in-aid should be statutorily provided and they should not be charity grants of the Finance Minister, whoever he may be. He might be the best expert or the best friend of the poor man, it does not matter. These grants-in-aid or subventions should be reviewed periodically, say, every three years or five years. This is the suggestion that I put forward. I want them to state definitely what they are going to do for the teeming millions. The Provinces will come in as poor *zamindaries* and big *zamindaries*. While I support Clause 3 because it gives me a chance to enunciate my views before this House

and which I hope the Union Powers Committee will accept, I hope that the sections in the Constitution Act will render social justice and ensure minimum standard of living to every citizen in India.

Shriyut Omeo Kumar Das: Mr. President, Sir, I have already told you while withdrawing my amendment I would like to make a few observations in support of this clause—Clause 3.

Sir, the question of subsidies has been in all federations a very perplexing one. But still these questions are being solved in a spirit of compromise. In all the federations the constitution-makers approach this problem with a spirit of compromise and try to give a fair deal to all the units. Sir, we are entrusted with the task of framing our constitution and we have to deal with this most perplexing question of subsidies. This question is all the more perplexing situated as we are with national income extremely low and with so many different problems in different provinces, with so many backward communities and tribes the provinces and many other complicated problems. Still I feel that the Expert Committee which will be set up in future will deal with this question and try to give a fair deal to all the units.

While framing this draft constitution for the Union we have almost accepted the constitutional set-up envisaged in the Government of India Act, and I have a lurking suspicion in my mind that we may also accept the financial arrangement that was provided for in that Government of India Act. Sir, it is not necessary for me to tell this House that the financial arrangement set up under that Act was conceived with a different outlook. At that time the Provinces were confronted with deficits and the Committee that was set up at that time, I mean the Otto Neimeyer Committee, had to determine how to bring about budgetary equilibrium. Besides, Sir, the Committee approached this question of budgetary equilibrium with the notions which prevailed regarding public finance at that time. These notions have now undergone a radical change in these few years and they have been replaced by a different criterion—the criterion of maintaining full employment, whether maximum advantage for the people can be brought about. A financial system which was designed to meet a static economy is now being called upon to meet a situation which is essentially dynamic. Sir, a government of the people and by the people is being installed and what will be the meaning, and what will be the utility of that government if it cannot bring about the maximum advantage to the people?

Sir, it will not, perhaps, be out of place if I refer here to the Canadian or Australian constitutions. The framers of those constitutions have evolved a better system of meeting the provincial requirements by giving better subsidies to the provincial units. Sir, in my province of Assam, there are special problems. The country is agricultural without any big industries. It is a land full of backward tribes and communities and a large number of backward people have been artificially transferred to that land as labourers to the tea plantations. Then there are the turbulent rivers which devastate the

[Shriyut Omeo Kumar Das]

smiling countryside. There are also virulent diseases which bring abou ruin to happy families. They need control. These are big problems and unless we have a better financial system, we cannot hope to meet these crying needs. No doubt, ours is a backward country, but I have to bring to the notice of this House that we are one of the largest contributors to the Central exchequer, by way of the export duty on tea and jute and the excise duty on petrol. By these means we contribute to the Central exchequer no less than seven crores of rupees. But under the present financial arrangement we are receiving only a trifling subvention of Rs. 25 lakhs. I do hope that the expert committee which investigates this question hereafter will try to give a fair deal to Assam.

With these few words I beg to support Clause 3.

Mr. Mohammad Sheriff (Mysore State): Mr. President, Sir, those who were responsible for bringing out this Report deserve our congratulations for having thought it desirable to make provisions for the uplift of those who are undergoing so many hardships. So far as this particular clause is concerned, it proposes that the Federal Government should have the power to make subventions or grants out of federal revenues for any purpose notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws. There is no need for me to tell you, Sir, that we have got several post-war schemes, schemes designed to improve the economic and commercial and educational standard of the people. These schemes are on the anvil, but it is very necessary that money should be got to put them into execution. So far as the Provinces are concerned, they do not have the wherewithals to put these schemes into immediate effect. And so far as poverty is concerned it is rampant not only in the northern provinces, but also in the south. So many people are dying of starvation and hunger and the enlightenment and educational advance of the masses should receive immediate attention too.

So far as these nation-building items are concerned, I do not think the provinces have the money and it is the duty of the Centre to see that money is supplied to them so that out of this money, they may spend for the needs and requirements of the poor people and in the way of their enlightenment and education. These are the two items which will bring progress and advancement to the country. These are very necessary and it is very good of the framers of the report that they should have taken this aspect of the question and decided that from out of the Federal revenues provinces also would have necessary funds. With these words, Sir, I have very great pleasure in supporting it.

Mr. President: I should have thought that it is a very innocent and simple clause and would not have required much discussion. I would ask the House whether further discussion is necessary since there is no opposition.

Honourable Members: No, no.

Mr. President: The question is:

"The Federal Government will have power to make subventions or grants out of Federal revenues for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws."

Clause 3 was adopted.

CLAUSE 4

The Honourable Sir N. Gopalaswami Ayyangar: I beg to move Clause 4:

"The Federal Government will have power to borrow for any of the purposes of the Federation upon the Security of Federal revenues subject to such limitations and conditions as may be fixed by Federal law."

This is what every Government has to do if it has to meet expenditure which it cannot meet out of its current revenues, for it has got to meet expenditure whose effects might be of a lasting character —expenditure of a developmental nature. The raising of funds by borrowing is a very necessary item in any kind of governmental finance. This clause is a very necessary item in the Constitution.

Mr. President: Is there any amendment of which any member has given notice?

Mr. M. S. Aney (Deccan States): I suggest that for the words "upon the security of Federal revenues" substitute "upon the security of Federal assets and revenues".

Mr. President: Mr. Aney suggests upon the security of federal asset and revenues.

The Honourable Sir N. Gopalaswami Ayyangar: When we consider the draft we will take that into account. I do not think it is really necessary.

Mr. President: Is there any amendment to this clause?

Mr. B. Das: I have one. It is amendment No. 24 in supplementary list No. 1.

Mr. President: That I take it is in connection with a new clause. It does not refer to this clause.

The question is:

"The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues subject to such limitations and conditions as may be fixed by federal law."

Clause 4 was adopted.

CLAUSE 5

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I move:

"The Federal Government will have power to grant a loan to, or guarantee a loan by, any Unit of the Federation on such terms and under such conditions as it may prescribe."

This also is a simple and very necessary clause. The Federal Government makes itself responsible for the solvency and the adequate meeting of the expenditure of the Units by the Governments of those Units. If they stand in need of a loan the Federal Government will either grant the loan or guarantee a loan which is raised by the Unit.

[**The Honourable Sir N. Gopalaswami Ayyangar:**]

Sir, I move:

(Amendments 378 and 379 in List No. 2 were not moved.)

Mr. President: There is no amendment to this. The question is

"The Federal Government will have power to grant a loan to, or guarantee a loan by, any Unit of the Federation on such terms and under such conditions as it may prescribe."

Clause 5 was adopted.

Mr. President: I have notice of an amendment to this part by way of an addition.

Mr. B. Das: I am not moving it.

Shri. T. T. Krishnamachari (Madras : General): I am not moving VII-A, but VII-B and I would therefore like VII-B to be renumbered as VII-A. Sir, I move :

" Part VII-A. There shall be an Inter State Commission constituted in the manner prescribed by federal law, with such powers of adjudication and administration as may be similarly prescribed for the execution and maintenance of the provisions of this Constitution relating to trade and commerce and generally for adjudicating in similar matters as may be referred to it from time to time by the President."

The object of my moving this amendment is that in the matter of regulation of trade and commerce, so far as this Constitution is concerned the only reference we have come across so far is Clause10 in the Fundamental Rights which this House accepted in a previous session. Clause 10 says :

"Subject to regulation by the law of the Union Trade and Commercial and intercourse among the units and between the citizens shall be free."

I find in the report that has been submitted by the Union Powers Committee that Trade and Commerce with Foreign countries is covered by item 17 in List No. 1, the Federal List, and Trade and Commerce with the provinces is included in item 26 in List 2, the Provincial List. Actually these two items follow closely the corresponding items in the Government of India Act, 1935, *viz.*, item 19 in List I, Schedule VII and item 23 in List II of the same schedule. A slight change has been made in the wording of these two items but the contents are substantially the same. I however find a lacuna in the new proposals for a Constitution in this respect. I find this Constitution does not contain any clause analogous to Section 297 of the Government of India Act which laid a definite embargo on any device by legislation to put a ban on the freedom of inter-provincial trade. I have no doubt that the Members of this House are fully aware of this particular section in the 1935 Act and of the implications that go with it. I am therefore somewhat surprised that it should find no corresponding mention in this Constitution. Apparently the framers of this Federal Constitution have been guided by the practice that obtains in the matters of dealing with this subject in other Federal Constitutions in the world.

Sir, so far as the United States is concerned the position is that in article I, section 8 of the Constitution, there is a reference in the powers of the Congress to regulate Commerce with Foreign nations and among the several States which has now become practically the sheet-anchor of a

vast amount of judicial decisions and has resulted in the creation of a number of administrative bodies to regulate various types of commercial activities within the territory of the United States. I do not think that a Federation, like the one we envisage for ourselves, could leave such important matters as vague as they are in the American Constitution, for the reason that, while the American Constitution is of the Presidential type where the initiative rests with a single individual the President, ours is to be of the parliamentary type where the initiative is not held by any one person. We have in this matter rather to look to the examples of other Federal Constitutions like those of Canada and Australia.

So far as Canada is concerned, regulation of trade and commerce finds explicit reference in the distribution of powers in Section 91, Item 2 of that country's Constitution. Therefore it does not offer any parallel to the position in which we are placed today. The Australian Constitution, however, is more or less on the lines we have envisaged for our Constitution in regard to trade and commerce. There is a reference in section 51 of the Australian Constitution to internal trade and commerce. But, apparently having learnt from the experience of the United States, they have been wise enough to add a few more sections to their Constitution in the matter of the regulation of trade and commerce. These are sections 101, 102, 103 and 104 and I am now referring to section 101. My amendment is more or less a verbatim copy of this section 101 which provides for the appointment of an inter-State commission for the purposes of adjudication and administration of the provision of the Constitution in regard to trade and commerce.

Sir, it might be felt that the wording of this particular amendment of mine is not appropriate. Actually I have gone a little further than the wording of this section in the Australian Constitution as I have added the words : " and generally for adjudicating in similar matters as may be referred to it from time to time by the President ". My reason for doing so is that in section 135 of the Government of India Act, provision has been made for the Governor-General bringing into being a Provincial Council where matters like this may be threshed out and frictions, strains and stresses in the Constitution that might exist, eased by discussion amongst the representatives of the units. We find no provision for any such agency corresponding to this has been made in the Constitution we are now discussing. Therefore I felt that the scope of my amendment should be wider than that of section 101 of the Australian Act and it should be open to the President to refer other matters also to this Inter-State Commission.

Sir, it might be said that a very bold reference like this does not help one very much. What the position of the Inter-State Commission should be I am leaving to the Federal Law to lay down. I have not copied the parallel section of the Australian Act No. 103 and have not provided that the Members should be so many in number, that they should have such and such qualifications and so on. These are matters which have to be considered at length later on when the Constitution is in operation and a Federal Law has to be enacted for the purpose. What I desire is that some room should be left for enlarging the powers of this Inter

[Shri T. T. Krishnamachari]

State Commission. Whether it is only matters regarding trade and commerce and others incidental should be referred to the Commission or whether it should be the means by which some kind of co-ordination in the economic activities of the Units could be achieved and such friction as might arise smoothened are matters which may be left to the draftsman of the Constitution act and to the Federal Law that may be brought into being later on. I hope, Sir, it will be possible for the Mover to accept my amendment. (The Honourable Sir N. Gopalaswami Ayyangar: You are the Mover). I meant the Mover of the report of the Union Constitution committees' proposals. I am quite willing to agree to any changes being made by the draftsmen in my amendment in regard to the wording of it before it comes to us finally in the form of a draft Bill commend my amendment to the House for its acceptance. Sir, I move.

Shri. K. Santhanam: (Madras: General): Sir, I beg to support the amendment moved by my friend Mr. T. T. Krishnamachari. In all Federal Constitutions there is always a conflict between the need for unity and the need for local autonomy. In certain respects this reconciliation has to be achieved through Federal legislation and administration. But this process is not available in the case of many matters and so, certain non-federal institutions have to be set up. The actual scope of Mr. T. T. Krishnamachari's amendment is rather narrow. I hope when the time comes we shall be able to expand it. We have to evolve not only this Commission, but many Commissions for voluntary co-operation between the Units. Let us, for instance, take the Sales Tax. It is a provincial tax. I should expect in the coming years this tax becoming one of the most important sources of revenue for the Units. But unless the Units voluntarily co-operate with one another and evolve a uniform method of taxation, there may be great shifting of trade from one Unit to another to the detriment of the normal development of the Units. In certain contingencies, the Units may even be driven to the necessity of handing over the collection and distribution of this tax to the Federation. It is better far that, in the exercise of their functions, the Units voluntarily co-operate, create a machinery for such co-operation and evolve certain standards and methods keeping to themselves full liberty and discretion to make local variations. It is more as a sample of voluntary inter-provincial co-operation that I support this amendment. As this will be in the Statute Book as part of the Constitution it will set up a precedent which will give a sort of pattern for Units to join in many other spheres. Especially in matters like irrigation, agriculture, etc. such commissions will be of great use. So I suggest that this matter should be gone into by a Special Committee and its scope investigated before it is put in the draft Constitution.

How these Commissions should be constituted, whether they should be elected by the legislatures or nominated by the Units, all these matters require careful consideration and I hope proper steps will be taken to have the scheme circulated among the provincial governments and only after their consent is taken to put it in the final draft of the constitution.

Mr. R. K. Sidhwa (C. P. & Berar : General) : Mr. President, Sir, I welcome this proposition as it is of a very important nature but I do feel that the wording is rather narrow. Such an Inter-State Commission also requires to investigate the economic conditions of the country, and apart from trade and commerce, I would suggest that the word 'economics' should also be put into it. The question of money will play a prominent part in the future constitution, and as was stated only a few minutes ago by Mr. B. Das in connection with another clause, for the nation-building programmes a good deal of money will be required as subventions from the Federal Government to the provinces and unless we have got sufficient money for the purpose of giving subventions, it is not possible for the nation-building programmes to be accomplished. It has been, Sir, our cherished desire, that when India becomes free, the nation-building programmes will be given a new fillip, and unless we have also an Economic Commission of the nature proposed for trade and commerce, I can assure you, Sir, we shall never be able to go ahead with our nation-building programmes. This is of considerable importance both to the provinces and the Federation. When the question of finances to be given to the various provinces is raised, the federal government will say that they themselves are hard pressed for money. Therefore, it is necessary that in the constitution itself provision should be made whereby an Economic Commission will be set up so that they may devise ways and means of advancing the nation-building programmes, for instances public health, social security, social co-operation. All these things require immediate attention. If we do not give them immediate attention, I can assure you, Sir, that the people will not be content with any type of constitution that we may make. In our Objectives Resolution itself we have made it perfectly clear that we stand for the socialist system. Sir, this is a welcome suggestion but I do request the Honourable the Mover to add the words 'economics' also in the wording of the clause. We want to do something really new, something really big for the benefit of the people, and for that it is very necessary that we should have an Economic Commission. While therefore supporting this amendment I request that the word 'economics' may be added in it.

Mr. President : Does anyone else wish to speak ?

The Honourable Sir N. Gopalaswami Ayyangar : Sir, I do not propose to say much on this resolution. The principle of it is sound. It says that provision should be made in the constitution for setting up an Inter-State Commission for the purposes which the mover of this amendment has already explained in detail to the House. I would only say that, in accepting this amendment, I do not stand committed to the actual terms of it, but would like to reserve the liberty to alter the language perhaps even the substance of what is contained in this amendment before we translate it into a section or sections in the Union Constitution. Sir, I accept it.

Mr. President : I would now put the amendment of Mr. T. T. Krishnamachari to vote.

The motion was adopted.

The Honourable Sir N. Gopalaswami Ayyangar: Part VIII refers to the Directly Administered Areas. The clauses that I want to move run as follows :—

"1. The Chief Commissioners' Provinces should continue to be administered by the Centre as under the Government of India Act 1935, as an interim measure, the question of any change in the system being considered subsequently, and all centrally administered areas including the Andamans and the Nicobar Islands should be specifically mentioned in the Constitution.

2. Appropriate provision should be made in the Constitution for the administration of tribal areas."

The latter clause really is dependent upon the report we shall receive from the Advisory Committee. Whatever is recommended by that Committee and accepted by the House will go into the new constitution.

As regards the directly administered areas the Committee recommends that the existing state of things might continue, the question of making any changes in the constitution and administration of these Chief Commissioners' provinces being left to be attended to in the Federal Parliament after it comes into being.

***Mr. President**: There are certain amendments to this clause.

(Mr. H. J. Khandekar did not move his amendment No. 380.)

Shri Gokulbhai D. Bhatt: (Rajputana Eastern States): *Mr. President, another improved form of the amendment, conveying nearly the same sense which my amendment has, is about to be moved and so I am not going to move mine.]

***Mr. Deshbandhu Gupta**: (Delhi): *[Mr. President, the amendment which I am going to move runs as follows :—

"That consideration of clause 1 be postponed and that a special Sub-Committee consisting of seven members to be nominated by the President should bo recommended before the next session of the Constitutent Assembly to suggest suitable constitutional changes to be brought about in the administrative systems of the Chief Commissioners' provinces so as to accord with the changed conditions in the country and to give them their due place in the democratic Constitution of Free India."

Regarding this, I have only to submit that according to the recommendations of the Union Constitution Committee, the Constitutent Assembly, at present, intends doing nothing for Chief Commissioners' provinces. I consulted the members of the Union Constitution Committee, Provincial Constitution Committee and some other members, and I have reached this conclusion. They do not intend that in the Chief Commissioners' Provinces, which include the three major "provinces" of Delhi, Ajmere-Merwara and Coorg, the present form of administration should be continued any longer. But it is only for the sake of convenience that they have recommended it. Naturally, when the population of these districts comes to about 30 lacs, they desire that on the occasion of the formation of the Constitution for the whole of the country, there should be a mention of these districts also in that constitution, and that there should be a definite recommendation for their administration in future. With this view, I am placing this amendment before you.

I am of opinion that since we appointed the Union Constitution Committee to formulate a Constitution for the centre and the Provinces

[ ]&*[English translat on of Hindusthani speech.

likewise it was necessary to appoint a Committee for Chief Commissioners' Provinces, though they are few in number and have a small population which however is not negligible. I am glad that in a way it is an agreed amendment and I think that when the Committee is appointed, it would consider all aspects of this matter. Most of you are residents of Delhi in this way that you spend a major portion of the year here. Most of you are often our guests, and therefore, I think that when the difficulties of Delhi people come before you, this Constitution Committee will duly consider them.

I do not wish to say any thing more at present. Considering the difficulties that the people in the Chief Commissioners' provinces have to face, they should not be deprived of any kind of self government now. Besides this, the part they have played in the struggle for freedom should come before the Committee and I hope it would recommend such a constitution as would be acceptable to the whole House.

I do not want to take up the time of the House for long. I hope that this amendment will be accepted. If this amendment is approved, the other amendments of which notices have been given by us need not be moved.]*

Mr. President: There are no other amendments to the clause, but if the amendment suggested by Mr. Deeshbandhu Gupta is accepted, it will not be necessary to consider the other amendments.

The Honourable Sir N. Gopalaswami Ayyangar: I accept his amendment except that I would substitute the word 'Committee' for 'Sub Committee'.

Mr. President: It is accepted by Sir N. Gopalaswami Ayyangar

Mr. R. K. Sidhwa: Sir, I rise to support this Motion, not because, Sir, in supporting it, I want to make a speech but I want to impress upon the members who will form the Committee for this purpose to realise the importance of this question, and, therefore, I do feel some remarks are appropriate at this stage, when seconding this Motion. There are so many subjects concerning Delhi City, which have been ignored all along. It is said that Delhi is the seat of Imperial Government. The Government here look to All-India affairs and in this way they have neglected Delhi City and the Province. By way of illustration, there is a transport company here in Delhi called G. N. I. T. and people are cursing this Transport Co., because it could not cope with the traffic and at the same time the authorities are charging fabulously heavy rates. Now, if Delhi had its own Provincial Government, and if this matter came within their jurisdiction, it would certainly look into the matter at once. Transport licence is given by local Governments and if a responsible separate Government existed they would either nationalise the service as did the Punjab Government or they would have the service improved. It may look a small matter, but nevertheless it affects the average man. The man in the street accuses the Government for

[*English translation of Hindustani speech.

[Mr. R. K. Sidhwa]

doing nothing in the matter. Then there are questions like irrigation, P. W. D., prohibition, etc. If there is a separate Provincial organization it will certainly look into the matter, no matter what the population is. Because Delhi is a Capital town, this has been ignored in the past. I do feel strongly that because Delhi has been the Capital of India, this city and the adjoining villages have been ignored in the past.

Sir, I therefore welcome this motion and I do impress upon the Committee to bear all this in mind. I want a responsible Government responsible to this Legislature, so that it can become a forum for ventilating the grievances of the public of the City of Delhi. From this point of view, Sir, I heartily support this Motion. It is already overdue. I must state, Sir, when I found in the Constitution that Delhi will probably remain as it is and later on in the future Constitution a Commission may be set up, I moved also an amendment that in the new Constitution to come, Delhi should have its own Legislature and the public must be enabled to ventilate the grievances of the people of the City or the Province. Therefore, Sir, I wholeheartedly support this Motion.

Mr. C. M. Poonacha (Coorg): Mr. President, Sir, I thank Sir Gopalaswami Ayyangar for having accepted this amendment of ours and in doing so, I would like to make some observations by way of suggestions. On a previous occasion, Sir, on the floor of this House, I had suggested that a Committee of this type should be appointed to examine the question of the Chief Commissioners' Provinces. The problem of the Chief Commissioners' Provinces is not so simple as it appears to be. The problem of each of these areas varies one from the other. This fact is borne out in the reports of the Constitutional Enquiries that preceded the passing of the 1919 and 1935 Acts. The question of the Chief Commissioners' Provinces was not properly dealt with in 1919 and 1935 Acts and the question is still hanging fire. Therefore, Sir, I feel that a full examination of the conditions obtaining in each of these provinces as under the 1935 Acts should be undertaken and suitable recommendations made. It may be necessary for that purpose to make local enquiries or at least elicit view points through a set of questionnaire.

So far as Coorg is concerned, I had stated on a previous occasion that I have given a definite assurance in the Legislative Council there, at the time of my election to this Assembly, to the effect that the opinion of the people of Coorg will be ascertained before bringing any drastic changes in the system of administration of Coorg. Coorg has its own problems and requires a thorough investigation. It may not be out of place here, Sir, if I suggest that the Committee would do well to visit Coorg in order to make a first hand study of the Coorg Legislative Council there. This Council has been functioning for the last 24 years and it would be of great use to the Committee to examine how it has been working for the last quarter of a century.

In conclusion, I may be permitted to say, Sir, that as the matter is of very vital importance to the people of these areas, the members representing the Chief Commissioners' Provinces in this Assembly should

be associated in the deliberations of the Committee. As the matter is rather of a complicated nature, I would also suggest that our able constitutional lawyers who have worked so much for the preparation of this Report on the Union Constitution should be included in he Committee. This question deserves very careful examination and able guidance.

Pandit Mukut Bihari Lal Bhargava (Ajmer-Merwara): Mr. President, Sir, I wholeheartedly support the amendment moved by Mr. Gupta. It is strange, Sir, that the Union Constitution Committee which was specially delegated with the authority to deal with the question of the Chief Commissioners' Provinces has not made any suggestion. It has simply deferred the whole question and has stated that the question of change in the system shall be taken up at a later stage. It is really a matter of great pleasure, Sir, that the sponsor of this clause has agreed to accept the amendment and that a Committee will be appointed by the President to go into the question of the Chief Commissioners' Provinces.

Sir, the Chief Commissioners' Provinces are a variety of territories situated in different parts of the country and they have got a historical importance of their own. So far as my province, Ajmer-Merwara, is concerned, it is situated in the heart of Rajputana and is a place of historical importance. In fact, its strategic position has been the cause of all this autocratic administration that has prevailed in my province throughout the British Rule. All efforts at effecting a change and amelioration in the administrative system have failed. The Minto-Morley Reforms of 1909, the Montagu-Chelmsford Reforms of 1919 and the Constitution Act of 1935 have left altogether unaffected and untouched the autocratic administrative system that prevails in this province and all other Chief Commissioners' Provinces. In fact, Sir, the recommendation of the Union Constitution Committee to the effect that this question may be taken up at a later stage is altogether out of tune with the democratic constitution of the Republic of India. Therefore, Sir, it is most opportune that simultaneously with the great constitutional changes in other provinces and in the Union, the constitution of the Chief Commissioners' Provinces, which is of a thoroughly autocratic nature, should be overhauled and brought into line with the rest of India. I hope, Sir, that the Special Committee which we are going to appoint will give due consideration to problems of each Chief Commissioner's Province and suggest a constitution which may be of a thoroughly democratic nature.

So far as Ajmer is concerned, I say that it is a Province which deserves to be raised to the status of a full autonomous Governor's Province and the mere argument of its smallness or its slender financial resources should not stand in the way of conceding to the people their right of self-determination and their right to be masters in their own house. I, therefore, suggest that the Sub-Committee that is to be appointed by you should consider the problem in all its aspects and should give due hearing to the representatives of the Chief Commissioners' Provinces. In fact, Sir, I wholeheartedly support Mr. Poonacha's suggestion that the representatives of the Chief Commissioners' Provinces should be given adequate representation on this Sub-Committee. At any rate, the Sub-Committee should not

[Pandit Mukut Behari Lal Bhargava]

arrive at any conclusion concerning these provinces unless and until they have given full hearing to the representatives of these provinces. I hope, Sir, that by the end of September, this Sub-Committee would be able to recommend to the House a constitution which will be thoroughly democratic and which will give to the people of these provinces a glimpse as to the liberty coming and as to the establishment of a republic in India. This question should not be shelved by the Committee in the way it has been shelved so far.

With these remarks, I support the amendment.

Mr. B. Das: Sir, I wholeheartedly support the resolution moved by my friend, Lala Deshbandhu Gupta. There must be a Committee to raise the administrative standard of these Chief Commissioners' Provinces and the people there should enjoy equal privileges like us.

I can visualise there will be difficulties. These Chief Commissioners' Provinces came into existence to maintain the British power and British autocracy in India. The last speaker was speaking on behalf of Ajmer-Merwara. Ajmer-Merwara was the Political Department's paradise so long. Although the Political Department is now abolished, that place still remains the Political Department's paradise and public representatives have little say in the matter.

Delhi, Sir, showed that British autocracy can do anything it likes in the very face of the Government of India, through the Chief Commissioner in Delhi. All along there was an English Chief Commissioner and he could do anything he liked in the face of the Central Assembly that is situated in one part of this building and in the face of the single representative of Delhi in the Central Assembly. The Delhi municipal administration is very antiquated and antedated. It is a body of *jo-hukums* and it elects the Advisory Council which is very strange indeed !

Then, Sir, I go to Panth Piploda in Rajputana, with a population of 15,000 people. Could the people have any representation? I suggest to the Committee that will enquire into this, that this should be identified with Ajmer-Merwara and form part of that Chief Commissioner's Province, be it a Governor's province or a Deputy Governor's province.

As far as the Andaman and Nicobar Islands are concerned, that blackhole plague-spot in India of which one heard so much, is inhabited by a few Indian ex-prisoners. The Nicobar Islands are inhabited by some 20,000 aboriginals. They live under very primitive customs and conditions.

So far, the Andaman and Nicobar Islands have been administered by a Chief Commissioner always recruited from the Assam Civil Service. I wish to suggest that the people there are not so enlightened except a few Englishmen and Anglo-Indians that have found settlement there for trade purposes. I suggest that the Andaman and Nicobar Islands should have representation in the Provincial Legislature of Assam Assembly hnd the people of Nicobar Islands should be treated as tribal people and

must receive special protection like other tribal people. I do not think the Advisory Committee on Tribes have visited Nicobar Islands and enquired into the capacity and limitations of the people there.

As far as Coorg is concerned, it was created into a Chief Commissioner's Province and the Chief Commissioner there is all in all. The Chief Commissioner has all the freedom—I speak subject to correction by Mr. Poonacha—and is an autocrat. The Coorg planters, who are mostly British, think that it is a British Kingdom.

All these raise a fundamental issue, and as we are making a Constitution for the whole of India, these people should receive equal rights as we have; but how it can be adjusted is for the Committee to decide; but the Committee must visit Nicobar Islands and understand the problem of the people. In the same way I support Mr. Poonacha's suggestion that the Committee should also identify the representatives of the locality. The Committee should visit Coorg. Perhaps except my friend, Sir Gopalaswami Ayyangar who might have visited Coorg on a holiday very few of us have seen or have known the autocracy of Coorg; but those of us who know what the Chief Commissioners have been in the past can visualise the repression and oppression the people of Coorg must have gone through.

*[**Pandit Thakur Das Bhargava** (East Punjab: General): Mr. President, I wish to speak a few words regarding this resolution, from a particular point of view. I have great sympathy for the people of Ajmer-Merwara and other Chief Commissioners' Provinces. I have greater sympathy with Delhi in particular, because there is considerable affinity between Delhi and my Constituency. As a matter of fact, before 1912 when Delhi became the capital of India, it was a part of the Ambala Division of the Punjab. Even now Ballabgarh, Sonepat and Palwal, the three Tahsils of Delhi, are included in the Rohtak Districts and portions of the Eastern Punjab are included in Delhi. There is that socio-economic homogeneity between Delhi and villages of the Eastern Punjab which is considered essential for the amalgamation of one region with another. Taking into consideration all these points, this part of Delhi which is included in the Chief Commissioner's Province is in reality a major part of Ambala Division and has since long been trying for amalgamation in the Governor's province.

A resolution is shortly to come up before the House, in which the question of redistribution of provinces on cultural and linguistic bases will be discussed and before this many other important questions have also been discussed. Now this is a question which may be considered to be very vital. Large numbers of conferences are being held in the Punjab and U. P., demanding amalgamation of diffused homogeneous tracts of Ajmer-Merwara and Delhi into one province, because they speak the same language and have the same way of life. If it is intended to keep the organically united parts of the East Punjab separated for ever, then I would oppose the resolution. It is my desire that after the all-important question of the Independence of India is settled, we might be able to create some new provinces. Till then, no final decision should be taken on this question.

So far as the question of the constitution of Chief Commissioners' Provinces is concerned, I am not opposed to it. I have only to submit that the Chief Commissioners' Provinces should also get their rights. When the rest of India

*[English translation of Hindustani speech.

[Pandit Thakur Das Bhargava]

is getting a democratic constitution, similar rights should also be granted to them by the Legislature. I am not opposed to it, nay, I have always been putting questions in the Central Legislature regarding these parts of Delhi. They are our own part and parcel. I have every sympathy with them and do want that they should be excluded from the list of provinces. I wish that Dr. Pattabhi's scheme of redistribution of provinces on cultural and linguistic basis should remain intact. This question should on no account be finally decided now. This question should be decided on its own merits. I have no objection if this question is referred to a Committee. It is not my intention that the question should be decided irrevocably. With these words I support the resolution.]*

The Honourable Mr. Jaipal Singh (Bihar : General) : Mr. President, I welcome the suggestion that a Sub-Committee be appointed to look into the future position of the Chief Commissioners' province. My own interest lies in the fact that some of these Provinces are overwhelmingly inhabited by tribals, the Andaman and the Nicobar Islands in particular. Some reference has been made about the two Sub-Committees which have been appointed by the Constituent Assembly to settle the question of Adibasi tracts, six fully excluded and 18 partially excluded areas, and, I think, it is necessary the position should be made quite clear here that these two Sub-Committees were bound by the very expression that was used ; that is to say that they were to examine no more than those Adibasi tracts, the excluded areas and the partially excluded areas. That is how the Committee began their work, but, now, a more generous interpretation has been put to those wordings. They may now make recommendations also for tribals who are outside those so-called tribal areas. That being the case, Sir, the two Tribal Sub-Committees are, I think, equally interested in the work that may be done by the Sub-Committee suggested by the Mover of this amendment. My own suggestion is that some members from the present Tribal Sub-Committees may be incorporated in the Sub-Committee that is to go into and examine the position of the Chief Commissioner's Provinces ; because there are some provinces where the whole problem will be one which will have to deal with the tribals. I support the amendment.

Mr. President : I will now put the amendment to vote. It has been accepted by the Mover.

The amendment was adopted.

PART VIII—CLAUSE 2

Mr. President : We may now take up Clause 2.

The Honourable Sir N. Gopalaswami Ayyangar : I have already moved it, Sir.

Shri K. Santhanam : On a point of order, Sir. The Tribal Committee has not yet submitted its report.

Mr. President : But that is the proposition before us. Does any one wish to speak on this clause ?

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* English Translation of Hindustani speech.

The Honourable Mr. Jaipal Singh : I have only a few words to say and I feel that they must be said in order to obviate a situation which might become very serious and dangerous in this country before long. Before I say that, I would like to repeat what I said a few minutes ago that the tribal areas should include also the problem of tribals who are outside the defined tribal areas.

Sir, His Excellency Sir Akbar Hydari, the Governor of Assam, visited the Naga Hills between June 26th and July 2nd. Some very unhappy developments have since then been brewing in the Naga Hills. Members may have read some news appearing in the Press and several Members of the Interim Government, and I understand, you also, Sir, have received telegrams from some of the Nagas about what they intend to do. I myself have been receiving on an average, a telegram per day, the latest telegram becoming more confounded than the previous one. Each one seems to go one step further into the wilderness. The position, if I may have your permission to explain it, Sir, is this. The Nagas have been misguided by certain persons into thinking that, with the withdrawal of British authority, the country would go back to them. They think they are going to be in the same position as the States, where the so-called paramountcy would lapse back to the States, and, therefore, they could do exactly what they liked. The fact that the Naga Hills have always been part of India, have never been anything like a State, has not been pointed out to them. On the contrary, it seems the Nagas have been misguided more and more as days have been going along into the belief that the Naga Hills belong to them and that they were not part of India ever and further, that, as soon as the Dominion of India came into existence, the Naga Hills would be the exclusive property of the Nagas. Sir, some of the leaders of the Naga Hills came to Delhi recently and saw some of the prominent members of the Interim Government. Those of us who came into contact with them tried to tell them the blunt fact. (*Interruption.*) I only desire that what I say should travel to the distant Naga Hills and reverberate there—that they have been misguided by interested persons into believing that they could do what the States could do by His Majesty's Government's June 3 Plan. I only wanted to say this, because I think that it is necessary something definite should be said on the floor of this Assembly. One of the telegrams sent to the Members of the Interim Government puts it in the mouth of the Constituent Assembly that "the offer for joining the Union has been rejected by the Nagas". The fact is there has been no question of an offer. Besides, an offer is unnecessary and uncalled for because the Naga Hills have always been part of India. Therefore, there is no question of secession. They are not an Indian State.

I hope the troubles that have been brewing there will be obviated by this definite statement on the floor of this Assembly. The unequivocal fact is that Naga Hills are part of India and they were never otherwise.

Shri V. I. Muniswami Pillai (Madras General) : Sir, I had given notice of an amendment for the protection of aborigines. But in the note it has been provided that any scheme that may come before the C. A. must be on the report of the Advisory Committee. So far the Advisory Committee has not submitted its report regarding the tribal areas or the aboriginal tribes people living in the areas distributed in various provinces. Until that report comes, I do not wish to move this amendment.

Mr. President: That really means that the report of the Sub-Committee will have to be taken into consideration before any scheme could, be provided. I do not think there will be any difference of opinion on such a clause. Therefore I put it to vote.

Clause 2 was adopted.

Mr. President: I may say here that if there are any amendments they will be considered when the report comes up before the House.

Shri K. Santhanam: Sir, I have an amendment which runs as follows:

"That after Part VIII the following new Part be inserted:—

'PART VIII-A—EMERGENCY POWERS

1. If, at any time, the Governor of a Province is satisfied that a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of this constitution and has so reported to the President of the Federation or if the President of the Federation is satisfied that the normal government of the Province has broken down, he may take any action which he considers necessary including (1) suspension of the provincial constitution (2) promulgation of ordinance to be applicable to the Province: and (3) issuing of orders and instructions to the Governor and other officials of the Province.

When any such action is taken by the President he shall report to the Federal Legislature and unless his action is ratified by both Houses of Legislature within a period of six months from the date of his first taking action the normal constitution of the province shall be restored. The situation shall be reviewd by the Federal Legislature and continuation, if necessary, of the emergency action approved every six months.

The President shall restore the normal constitution as soon as he is satisfied that the emergency has ceased to exist,."

This is complementary to the provisions which have already been added to the provincial constitution. According to Mr. Gupte's amendment which has been carried, the Governor has power for two weeks to take emergency action. If an emergency arises, he will have to take the sanction of the President. If that emergency arises and this action for two weeks is not sufficient then only the President and the Federal Government have to take action. I have described two contingencies in which the President will have to take action. One is when the Governor reports that he is unable to manage the situation with his special powers given to him. Secondly, if the government of the Province has so utterly broken down that it can do nothing, and when there is no authority capable of dealing with the situation, then the President on his own initiative can take action. When he does so, he will have to report to the Federal Legislature and do so once in six months, and the normal constitution will be restored as soon as the emergency disappears.

I think the whole thing is quite logical and is absolutely necessary. For instance, if the police machinery in a province breaks down and the

Governor can do nothing in the matter, he will have to invoke the powers of the President and this provision gives these powers to the President. Therefore, I hope the new provision which I have suggested will be accepted unanimously by the whole house.

Mr. H. V. Kamath: Sir, considering that the motion of Mr. Santhanam has no relation or relevancy to the provisions of Part VIII I fail to understand how it can be numbered Part VIII-A.

Mr. President: He has moved for the insertion of another part called Part VIII A. Emergency Powers.

Mr. B. M. Gupte (Bombay: General): Sir, I beg to move:

"That after Part VIII, the following new Part be insertede:—

'PART VIII-A—EMERGENCY POWERS.

1. (1) On report being made by the Governor of a Province under Setion ..... o Part .....of this Constitution, the President of the Federation shall have the power to issue, in consultation with his council of ministers, a proclamation assuming to himself all or any of the powers vested in or exercisable by any Provincial body or authority except the High Court, including the power to confirm, modify or revoke the Proclamation issued by the Governor.

(2) The Proclamation, underthis section, shall cease to operate at the expiration of 2 months unless its continuance for any further period is approved from time to time by a resolution passed by the Federal Legislature.'"

Mr. Santhanam has already shown how such a clause as this is necessary. We have already accepted the position, by passing Clause 15 of the Provincial Constitution that there shall be some emergency powers vested in the President. But in the Report there is no such provision made; hence my amendment and the amendment of Mr. Santhanam. They are both designed to remove this lacuna. My amendment provides that as soon as the President gets the report from the Governor he may issue a proclamation, in consultation with his Council of Ministers. As the Governor is authorised to take immediate action, there is no urgency for the President to act without the advice of his cabinet. That he does this in consultation with his Council of Ministers, is a point I want to emphasise as a point of difference between my amendment and that of Mr. Santhanam.

Shri K. Santhanam: Sir, under the Federal Constitution, the President always acts on the advice of his ministers.

Mr. B. M. Gupte: That is all right. I only emphasise it. It was agreed in the course of the debate on Governor's powers, that overriding power should be given to the President. There was heated controversy about power being given to the Governor: but so far as the President was concerned, there was unanimity of opinion. That power is now given

to the President, of course circumscribed by the condition that he has to consult his Ministers.

Another difference between Mr. Santhanam's amendment and mine is that he has provided for a period of six months while I have put it down as only two months. This is a power we give for dealing with an extraordinary situation and I think only the minimum power should be given and a period of two months is quite sufficient to convene the Legislature. Only that much power should be given as is absolutely necessary. The Federal Legislature is the supreme authority on this matter and therefore an endorsement from that legislature should be obtained. I have provided that unless the Legislature endorses the action of the President within two months, the proclamation of the President shall cease to operate. As the Legislature is supreme I have put no time limit on its power. If necessary the Legislature can from time to time give its assent to the proclamation. If it is a grave emergency, it will not last long; but if it should continue, in a sub-acute form, then the legislature can certainly from time to time extend the proclamation.

Therefore, I submit, Sir that my amendment is a better provision. In fact my amendment is based on the position arising from the acceptance by the House of the provision vesting the authority in the Government to issue a proclamation. Mr. Santhanam's amendment does not fit in with that position. It does not refer to the Governor's proclamation at all. It is based on the assumption that merely the power to report had remained with the Governor. I, therefore, submit that my amendment makes a better provision and should consequently be accepted by the House.

Mr. R. K. Sidhwa: If Sir Gopalaswami could state which of the amendments he is prepared to accept, that would perhaps facilitate the discussion.

Mr. President: Sir N. Gopalaswami, would you like to say anything now?

Shri. M. Ananthasayanam Ayyangar: Mr. President, Sir.....

Mr. President: Mr. Ayyangar.

Shri. M. Ananthasayanam Ayyangar: Which Ayyangar Sir?

Mr. President: Sir N. Gopalaswami Ayyangar.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I cannot categorically answer what Mr. Sidhwa has asked, but I will certainly indicate my views. Both the amendments that have been moved are intended to make provision for what the House has already accepted in the case of the Provincial Constitution. The House will remember that, when we were discussing the Provincial Constitution, it put into that Constitution a clause which is substantially the same as section 93 of the Government of India Act, 1935, with slight variations in details

The Governor was given power to assume to himself all or any of the functions of Government or any of the powers vested in or exercisable by any Provincial body and so on. Then there was a sub-clause which said.

"The proclamation of the Governor shall be forthwith communicated by the Governor to the President of the Union who may thereupon take such action as he considers appropriate under his emergency powers."

It becomes necessary, therefore, that we should somewhere in the constitution make provision indicating what the powers of the President may be in a certain emergency which arises in a province; and, from that point of view, I think both the amendments attempt to supply the omission which would otherwise exist in the outlines of the Constitution. The point for us to consider is what sort of provision should be made. The Governor himself has been given the powers to suspend practically all or any portions of the Provincial Constitution and take to himself powers possessed by the various authorities indicated in the Provincial Constitution. Having done that, he has got to make a report to the President and, if nothing happens, the proclamation will cease to operate on the expiry of two weeks. The emergency might be of a character which extends beyond two weeks or it may be such that the President of the Federation might consider did not warrant all the extraordinary measures which the Governor chose to take for tackling that particular situation. Therefore it is necessary that we should invest the President of the Federation with some powers to act on a report which he receives from the Governor of a Province.

Mr. Santhanam in his amendment has proposed a number of detailed measures which the President could take after receiving the report of the Governor. Now it is difficult for me to accept all the details of the measures that he has suggested in his amendment. For instance, he suggests that these powers should include suspension of the provincial constitution by the President, promulgation of ordinances applicable to the province and thirdly, issuing of orders and instructions to the Governor and other officials of the province. A Governor takes some action. It may be right or it may be wrong. If it is right, it might deserve to be extended beyond the two weeks for which that action could normally be in force. If it is wrong, the President has powers under the clause already carried in connection with the Provincial Constitution to revoke the proclamation of the Governor. And then the President will have to take action on his own which he considers appropriate for tackling the particular emergency. Whether the powers that we should vest in the President should be so all-comprehensive as Mr. Santhanam has suggested is a matter which, I think, requires very serious consideration. It makes a breach into provincial autonomy which many of us may not be willing to agree to but it is necessary that the President should have such power as may be essential for the purpose of tackling particular situation. If Mr. Santhanam will permit those who will frame the text of the Constitution to examine this provision both in substance and in language more carefully and propose something, for the consideration of the Constituent Assembly, which

[Sir N. Gopalaswami Ayyangar]

would co-ordinate the action of the Governor in the Province and the action that the President may have to take on the report of the Governor. I am prepared to accept the principle of vesting in the President certain emergency powers in this connection.

I would say the same thing in regard to the amendment of Mr. Gupte. The net result of what I have indicated is that while I am not prepared to hand over the entire administration of a province into the hands of the President even in an emergency of that sort, I am prepared to concede the position that he should have certain emergency powers in order to decide what appropriate action should be taken for dealing with a particular emergency and no more. I accept that principle. So if the movers of these two amendments will accept my assurance that we will try to translate into the draft some provisions which will implement this principle, there will be time for Mr. Santhanam and Mr. Gupte to scrutinise the draft when it comes up before the House again and propose any amendments of detail which they would like to press. That being so, I would ask that on this assurance they should withdraw the particular amendments of which they have given notice.

Shri. K. Santhanam: In view of the assurance given I beg to withdraw my amendment.

Shri. B. M. Gupte: Sir, I withdraw my amendment.

The amendments were, by leave of the Assembly, withdrawn.

PART IX

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I move Part IX, which reads as follows :

"The provisions for the protection of minorities as approved by the Constituent Assembly on the report of the Advisory Committee should be incorporated in the Constitution."

This is a very innocent clause.

Mr. President: The question is :

"That Part IX be accepted by the House."

The motion was adopted.

The Assembly then adjourned till Ten of the Clock on Thursday, the 31st July 1947.

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Thursday
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1947

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CONSTITUENT ASSEMBLY OF INDIA
Thursday, the 31st July 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.

Mr. President : I think there is no member who has to take his seat today. We shall proceed with the Agenda.

The first item on the Agenda is the motion of Shri Deshbandhu Gupta for amending Rule 5 concerning representation of Delhi and Ajmer-Merwara in the Constituent Assembly.

Mr. H. V. Kamath (C. P. & Berar : General) : Sir, with reference to the transfer of power ceremony on the 15th August, may I submit that your dignity and prestige as the President of the Sovereign Constituent Assembly demand that, so far as the ceremonial programme in this House at least is concerned, that should be settled and finalised by you and you alone without any official interference or dictation whatsoever. I am sure the House will be deeply indebted to you for an assurance on this point.

While chalking out the programme, Sir, I would implore you to include in it our traditional National Song, *Vande Mataram*, as well as that other beautiful song popularised by our great warrior statesman Netaji Subash Chandra Bose, namely, the song beginning with the words :

शुभ सुख चैन की बरखा बरसे भारत भाग है जागा ॥

(*Subh sukh chain ki barsha barse Bharat bhag hai jaga*)

Secondly, permit me to remind you, Sir, of the request I made to you on Monday regarding the presentation of the National Flag to every Member of the Constituent Assembly. We are rather anxious to have the Flag before the 15th August. I venture to hope that the Steering Committee will not stand in the way and will raise no objection to this proposal.

Mr. President : I may inform the House and the Hon'ble Member Mr. Kamath that, as regards the programme, I propose to make a statement at the close of the sitting today. There is no question of any dictation by any outside authority. We shall fix our own programme. (*Applause.*) As regards the arrangements for the 15th August, I have some ideas in my mind which I have considered with Pandit Jawaharlal Nehru and some other friends and I will place them before the House before we part today.

AMENDMENTS OF THE RULES

Mr. Deshbandhu Gupta (Delhi):* Mr. President, the motion which stands in my name is this :

"(1) That in sub-rule (2) of rule 5 (as amended) of the Constituent Assembly Rules, the words "the Advisory Councils of Delhi and Ajmer-Merwara" occuring after the words "as the case may be" be deleted.

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*English Translation of Hindustani speech.

[Mr. Deshbandhu Gupta]

(2) That for sub-rule (12) of Rule 5 (as amended), the following be substituted :—

'If any vacancy occurs by reason of death, resignation, or otherwise in the office of a member representing Delhi or Ajmer-Merwara in the Constituent Assembly, the President shall notify the vacancy and shall call upon the Chief Commissioner of Delhi or Ajmer-Merwara as the case may be, to take steps to hold a bye-election to fill the vacancy.

The bye-election shall be held, as nearly as may be, in accordance with the procedure prescribed by the Legislative Assembly Electoral Rules, as in force on August 1, 1947, for the election of a member to represent Delhi or, as the case may be, the Ajmer-Merwara constituency of the Indian Legislative Assembly'.'

As regards this, I have only to say that according to the earlier amendment of Mr. Santhanam a casual vacancy in the case of Delhi and Ajmer-Merwara was to be filled up by the Advisory Council which consists of not more than seven members.

It was natural that objections were raised from Delhi and Ajmer-Merwara as the advisory Council was not an elected body like the provincial Legislative Councils. It is only a small body formed by indirect election. Its powers are limited and it seems inappropriate that the Advisory Council consisting of a few members should be called upon to form an electoral college for filling a casual vacancy. If you look at it carefully you will find that the task of electing devolves only on three non-official members out of a total of seven. As far as Delhi is concerned, the Advisory Council has been elected by the elected members of Delhi and New Delhi Municipalities. The latter is the bigger body. It has some nominated members also, and therefore all its members do not take part in elections. There is another objection. It is this : if the Advisory Committee is entrusted with the task of election it would mean that 3 lacs voters of New Delhi would be disfranchised. This is not expected now as Delhi has no legislative Council. It was thought that the Advisory Council would do this job. But people have reason to complain that this would be against democratic principles. With this point in view, it is proposed to amend this rule. In the case of Delhi, a casual vacancy can be filled in the manner by which election was originally held in Delhi. The position of Delhi members is a bit different from that of others. These have been elected by provincial Assemblies, but those for Ajmer-merwara have been elected directly. Therefore, it would be right in principle that the by-election should be held in the same manner as the original election. This is my motion, I think it has been accepted by the Steering Committee. I hope the House will have no objection to it.]*

Mr. President : Does any member wish to say anything about this amendment ?

(No member rose to speak.)

I take it that no member wishes to say anything on this. I will put the amendment to vote.

The motion was adopted.

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*English Translation of Hindustani speech .

REPORT ON THE UNION CONSTITUTION

Mr. President : Then we come to the discussion of the remaining clauses of the report of the Union Constitution Committee. Shall we now take up Part X, Sir Gopalaswami Ayyangar ?

The Honourable Sir N. Gopalaswami Ayyangar : (Madras General): If I may suggest it for your consideration, Sir, we may perhaps take up the clauses left over for consideration.

Mr. President : You suggest that we now take up Clauses 7 and I have no objection.

The Honourable Sir N. Gopalaswami Ayyangar : I have already moved Clause 7. You may now call upon the members who have given notice of amendments to this clause to move their amendments.

Clause 7

Mr. President : The first is Clause 7. We had a number of amendments regarding Clause 7. Shall we take up these amendments or is there any amendment which has been arrived at by way of an agreement Is there any agreement like that ?

The Honourable Sir N. Gopalaswami Ayyangar: Sir, what I would like to say is that after having a discussion with those particularly interested in this amendment, we came to an agreed conclusion, and I gave notice of an amendment in terms of that conclusion. But I understand that there is some difference of opinion even as regards the form of the amendment of which I have given notice. If Honourable Members representing the States will move the amendments of which they had given notice and will indicate their views and if I see that the views indicated in the House are not exactly the views which I thought they held some days ago, then I would suggest some course of action which might perhaps bring the two points of view together. I would therefore suggest that you call upon the representatives of the States to move their amendments and to indicate their views.

Mr. President : The best thing is to take up all the amendments of which I have got notice. The first amendment to Clause 7 is by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. President, I beg to move amendment No. 192, with a little verbal alteration of a minor nature. I beg to move that for para. (*b*) of sub-clause (2) of clause 7 the following be substituted :

"(*b*) Notwithstanding the provisions of the Code of Criminal Procedure, 1898 or of any other law for the time being in force, relating to the remission of the punishment imposed on any person by any court exercising criminal jurisdiction, the President shall have the supreme right and power to remit wholly or in part the sentence passed by such court on any such person."

I beg to submit that this is only a drafting amendment and I submit it for the consideration of the Drafting Committee.

Mr. President : Sir B. L. Mitter.

Sir B. L. Mitter (Baroda State): Sir, the amendment which I move is

That in sub-clause (2) (*b*) of Clause 7 after the word " jurisdiction" the words "in a Province " be inserted

The object of the amendment is that the power of pardon and reprieve which now vests in a Ruler of a State may be preserved. If this amendment is accepted, then this power of the President will be exercised in matters arising in provinces and not in a State. I see the point that in regard to crimes which are created by the Union Legislature, the President should be the supreme authority. I could concede that point, but at the same time the States do not want the existing powers of the Rulers to be curtailed. A solution may be concurrent jurisdiction in the Rulers as well as the President. If Sir Gopalaswami will draft an amendment reserving the power of the Ruler and giving the same power to the President, I am quite willing to accept it.

Mr. President : Then I have got threeamendments in the names of Mr. Channiah, Mr. Guruv Reddy and Mr. Himmatsingh Maheshwari, which are all to the same effect. So they need not move them.

Then amendment No. 197 by Mr. Chengalaraya Reddy.

Mr. K. Chengalaraya Reddy (Mysore State) : I am not moving it.

(Mr. Gupte did not move his amendment No. 198.)

Mr. Debi Prosad Khaitan (West Bengal : General) : I am not moving my amendment No. 199.

(Sri M. Ananthasayanam Ayyangar did not move his amendment No. 4 of Supplementary. List 1.)

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move that for Clause 7 (2) (*b*), the following be substituted :

" (*b*) The power to grant pardons, reprieves, respites, remissions, suspensions or commutations of punishment imposed by any Court exercising criminal jurisdiction shall be vested in the President in the case of convictions—

(*i*) for offences against Federal laws relating to matters in respect of which the Federal Parliament has, and the Unit Legislature concerned has not, the power to make laws ; and

(*ii*) for all offences tried by Courts Martial.

Such power may also be conferred on other authorities by Federal Law:

Provided that nothing in this sub-clause affects any power of any officer in the Armed Forces of the Federation to suspend, remit or commute a sentence passed by a Court-Martial."

Sir, this amendment was given notice of after there had been discussion between me and the representatives of a number of States who have sponsored the amendment which Sir B. L. Mitter has just moved. The intention of that amendment was to restrict the power of pardon granted under this clause only to punishments imposed in Provinces. In other words, they wanted to retain in the Rulers of Indian States the unlimited power of pardon which they now possess in respect of all convictions.

Now, Sir, that raised an issue of some importance. We are now setting up a Federation and we are dividing sovereign powers between the Federation and the Units ; in respect of certain subjects the Federation has the power to make laws and in other subjects the Units have the power to make laws to the exclusion of the Federation. In the case of the Provinces there is a third list of subjects in respect of which both the Federation and the Provinces have the power to make laws.

Now, in considering this question of where the power of pardon should be located, there are two principles which we have to keep in view. The first is that we must have due regard to the authority which makes the laws against which the offences are committed. The second consideration that we have to take into account is the kind of courts which pronounce these sentences or convictions. It so happens that, so far as British India is concerned, we have a unified system of judicial administration and the courts in the provinces from the lowest to the highest have got jurisdiction to try offences not merely against Provincial Laws, but against Federal Laws also. In Indian States the same thing is in force. The courts of Indian States have power to try all kinds of offences, even offences which might become offences against the Federal Laws after the Federation comes into being. And the power of pardon also is more or less similar as between the Province and the Indian State with perhaps one exception. It is the Provincial Government, according to the Criminal Procedure Code as last amended, that has the power to pardon, commute or remit sentences in the case practically of all offences with the one proviso that if a sentence happens to be a death sentence the Central Government has a concurrent power. In the case of Indian States there is not that exception now in existence. Now we had to consider the question whether in these circumstances we should vest the power of pardon in the Provinces or in the Centre or in both. I think, Sir, the House will agree that, when we are setting up a Head of the Federation and calling him the President, one of the powers that should almost automatically be vested in him is the power of pardon. Now, is the power of pardon going to be unlimited in its character or are we going to give him only limited powers of pardon ? He is not like a hereditary monarch in a position to derive his powers of pardon from any theory of a royal prerogative and so on. If he exercises the power of pardon, we must vest the authority for it to the Constitution or to some Federal Law. That is why, in the Constitution, we have got to decide this question.

I may say at once that practically in all federations this power of pardon has been divided between the head of the federation and the head of the unit and the principle on which this division is made is that the head of the federation has the power to pardon offences against the federal laws and the head of the unit has power to pardon offences against the unit laws. Now, the question for us to consider is whether we would follow the practice of all federations.

As the draft now stands both in the Union Constitution and the Provincial Constitution, the power of pardon is vested in the President of the Federation. But provision is made for that power being conferred on other authorities by federal law. There is no provision in the draft model provincial constitution which you have already adopted which confers any power of pardon on the Governors of provinces. So, it comes to this, that the intention of the present clause is that the President is the primary pardon granting authority, and that federal law might confer such authority on other people.

Mr. President : There is one difficulty which I feel. Will you please explain that ? Does your amendment exclude pardon by the President in the case of offences under the Penal Code, say murder ?

[The Honourable Sir N. Gopal a swami Ayyngar

The Honourable Sir N. Gopalaswami Ayyangar : The clau se as stands does.

Mr. President : The clause as amended by you, does it give the President power of pardon of the offence of murder ?

The Honourable Sir N. Gopalaswami Ayyangar : No. It does not. As I explained, the clause as it stands, confers the entire power of pardon on the President though a federal law might confer it on other authorities. Now, the amendment that I have given notice of gives the President the power to grant pardon only in the case of offences against federal laws, and that is all. He cannot, for instance, grant pardon in the case of sentences under the ordinary criminal law. In the provinces, ordinary criminal law occurs as item 2, I think, of the concurrent list and in a case like that in the concurrent list, the theory of the 1935 Act is that the executive power does not necessarily extend to concurrent subjects in respect of which the federation also has power of making laws.

Mr. President : What are the cases that you contemplate in which the President would have the power to grant pardon ? Practically the whole of the penal law is a provincial subject. What will be the offences in which the President will have the power to grant pardon ?

The Honourable Sir N. Gopalaswami Ayyangar: I might mention, Sir, offences, say, against the Income-tax Act ; may be against the Sea Customs Act and Acts of a similar description which are exclusively federal.

Now, the principle behind my amendment is that the President will have the power to grant pardon, etc., only in the case of offences against the federal laws. The power to pardon offences against the ordinary criminal law and against laws made by the provinces or the States will vest in the heads of the provinces or the States.

Sir Alladi Krishnaswami Ayyar (Madras: General) : I presume that a corresponding change will be made in the provincial constitution conferring power apart from any delegation by the federal government to the provincial government both in respect of concurrent subjects anp subjects specially falling in the provincial list.

The Honourable Sir N. Gopalaswami Ayyangar : Yes, Sir. The intention is that if you carry this amendment in the Union constitution, a corresponding provision will have to be made in the model provincial constitution and steps will be taken to that end.

I shall, now, deal, Sir, with the point raised by Sir B. L. Mitter's amendment. His amendment says that this power of pardon in this particular clause should be limited to provinces. Of course, the Indian States are not concerned with how we divide the power of pardon between the Centre and the provinces. That particular amendment is motived by the facts which are now in existence in the Indian States, namely, that it is the Ruler who has the power of pardon in respect of every offence for which conviction is obtained in his courts. Now, the objection to excluding the President from power to grant pardon in such cases canno

hold, Sir, on any ground of principle, because of the other consideration that I asked the House to take into account in considering questions of pardon, namely, that the authority which makes the law and the executive which is responsible to it, whose function it is to execute the law, cannot be deprived of the power to decide the policy with regard to the grant of pardons, remissions, reductions, and so on. Therefore, the power in respect of federal offences has necessarily to vest in the President of the Federation. The amendment that has been tabled by me took note of one element. What I apprehended was a certain amount of sensitiveness, a delicacy, on the part of the Rulers who may not be willing to part with any portion of the power which they now exercise as regards pardon of sentences, and so on, and the further sensitiveness that, if you vest a concurrent power in any portion of that field in an outside authority, it would mean a certain amount of clash and conflict between the way in which the Ruler of a State might choose to exercise this power and the manner in which the President of the Federation might choose to exercise it.

So, I was impressed by the fact that, if possible, opportunities for this conflict should be avoided and that is why I have in this amendment divided the offences into two different categories, in respect of one of which the President of the Federation alone has the power to grant pardon and that is with regard to offences against federal laws, and another category in which the ruler of a State or the governor of a province will exercise this power. Now, I wish the House to understand that, if this means a curtailment of the present powers of pardon possessed by the ruler of a State, it also means a curtailment of the powers of pardon which the provincial Government now possesses under the Criminal Procedure Code. This amendment therefore seeks to place both the provinces and the States on the same footing as regards this power. The vesting of the power in the President is necessitated by the fact that we are creating a federation and we cannot omit to vest in the President of the Federation the power to pardon offences.

Now, Sir, it may be asked why is it that you want this power to be vested in the President in the case of all offences against the federal laws, while, under the present state of things, the Governor-General can exercise this power, and that only concurrently, with the provincial government and only in respect of death sentences. Well, the answer to that is simply this. We are making a new constitution and we are not necessarily bound by what obtains today. We have got certain principles to guide us in the making of the new constitution.

If under that constitution we are assigning certain powers exclusively to the Centre which formerly belonged to the States, then it is only reasonable that all ancillary powers in regard to the administratios of such subjects must also be assigned to the Centre and if incidentally it happens to interfere with the present practice in the provinces also, we must be quite prepared to face that curtailment. That is really at the back of the amendment of which I have given notice.

Now there are two or three matters at the end of this amendment to which I might make reference in passing. This gives the President the power to grant pardons, etc, in respect of all offences tried by Courts

[The Honourable Sir N. Gopal a swami Ayyangar

Martial. Courts-Martial are constituted under the Indian Army Act and the Indian Army has to be under the control of the Centre. It is only right that the personnel of the Indian army who get convicted by these Courts-Martial should look to the Preisdent of the Federation for pardons, commutations and similar concessions.

The second matter to which I should like to make reference is the proviso at the end of the draft. This is taken from Section 295 of the Government of India Act, 1935. It says that " nothing in this sub-clause affects any power of any officer of the Armed Forces of the Federation "—that expression has been substituted for ' His Majesty's Forces' in the Government of India Act—' to suspend, remit or commute a sentence passed by a court-martial., Under the Rules framed under the Indian Army Act certain officers of the Indian army have powers to grant remissions of punishment and those powers are saved by this proviso.

I think, Sir, that on the whole this particular amendment is quite in accordance with the principles which underlie the framing of any Federal Constitution and the curtailment of the powers of the Rulers of a State and of the Governors of the Provinces which is implied in this amendment is only a thing which should be expected naturally from any Federal Constitution. Sir, I move this amendment.

Sri M. Ananthasayanam Ayyangar (Madras : General) : Sir, I beg to move "That in sub-clause (2) (*b*) of the draft as amended, at the end the following may be added."

I am referring to the draft amendment circulated to members and this is an amendment to Sir N. Gopalaswami Ayyangar's amendment. This amendment relates to the addition to the rights of the President, to extend his right to pardon in cases of sentences of death passed in any province. I shall read the text of my amendment :—

"Where any person has been sentenced to death in a province, the President shall have all such powers of suspension, remission or commutation of sentences as are vested in the Governor of the Province."

I am confining this, Sir, to the power to grant pardon in cases of death sentences passed in a province. I would be glad to extend this power even to cases of death sentences passed in a State. Death sentences are being abolished in various countries in the world. In Norway capital punishment has been done away with. Even in such a country as Russia where we heard a long time ago of bloodbaths, they have also abolished capital punishment. All progressive countries in the world have altogether abolished capital punishment. Under the existing Government of India Act the Governor-General is entitled to pardon concurrently with a Governor in all cases of death sentences. In other cases it is the exclusive right of the Governor in all provinces to condone or reprieve or grant pardons in any manner under the ordinary Criminal law. The Governor-General can interfere only in cases of death sentences. It was before the 1935 Act was passed that the Governor-General could inerfere in all cases of punishment in a like manner as the Governor was entitled to exercise his right of pardon. But after the 1935 Act,

to make Provincial Autonomy perfect the right of the Governor-General to have concurrent jurisdiction in respect of pardon was taken away except in the matter of death sentences. That alone was preserved. Now under the draft amendment that has been placed before this House by Sir N. Gopalaswami Ayyangar no right to pardon has been conferred upon the President, except in matters exclusively within the competence of the Federation, *i.e.*, wherever the Federal Legislature may pass a law In those subjects alone the President has been given power to pardon. This is no doubt an improvement over the 1935 Act. But in the matter of granting pardon in the case of death sentences, wherever convictions might have been given, that right of pardon has been taken away. Life sentence is a very serious one and therefore there must be another agency also to consider if there are any cases in which pardon should be exercised. There may be some doubt if the President were an appellate authority in certain matters. There is no question of appellate jurisdiction of the President. He has concurrent jurisdiction. It is open to the Governor himself to grant a pardon. If he does not, the President will exercise his right to grant a pardon. In cases where the pardon is granted by the Governor, the President has no right to revoke that pardon and then convict him. I am trying to disabuse or remove certain doubts that might remain in any quarters. In criminal cases if a man is granted pardon by the Governor, he goes scotfree. If it is not granted by the Governor, then he has a chance to go to the President who can interfere and exercise the right of pardon in cases of death sentences. I hope the House will kindly accept this amendment which tries to incorporate in this amendment of Sir Gopalaswami a power which is now being exercised by the Governor-General.

Sir, as regards the other powers that have been conferred upon the President to have exclusive right to grant a pardon in the matter of offences against Federal Laws, I would only appeal to the States not to try to take away that right of the President in so far as they are offences against Federal laws. The States have submitted, they have come with open eyes and they have acceded to the Union with respect to Defence, Foreign Affairs and Communications. There may be other taxation measures also to keep these Departments going. If there are offences against these Departments and against these laws, it is but natural that the President should have the power, wherever they may be exercised. The Rulers of the States ought not to feel that their right to grant pardon is taken away. The Ruler has by his accession himself conceded the right to interfere in three federal matters as regards his State. Therefore there is no meaning in the objection If it should prevail it will be giving by one hand and taking away the same by the other. If Defence is entrusted to the Federation any interference with that subject or contravention should be punishable, on a complaint instituted by the President. There is no question of prestige in this matter, when particularly, the people from the States are in favour of this amendment. I appeal to the Ministers who represent the States here that they ought not to try to avoid the States conferring the power so far as Federal subjects are concerned in the matter of pardon, to the President of the Federation exclusively,

[Sir M. Ananthasayanam Ayyangar]

for this reason that Defence and those subjects have been entrusted by the Rulers of the States to the Federation. Otherwise merely passing laws would not be useful unless there are sanctions and the sanctions could be enforced. If the President of the Federation or the Federal Executive is trying to enforce a particular law which pertains to a right ceded by the Ruler himself any interference by the Ruler would be interference with the powers that he has conceded to the President. I am requesting the Ministers to kindly consider this matter and fall in line and not move any amendment to the draft that has been proposed by Sir N. Gopalaswamy Ayyangar. With all respect I would urge upon them not to take this as a matter of prestige. They have taken a particular step; this is an ancillary power that must be conferred on the President. Otherwise, there will be a conflict between the two and the conferment of that right to the Centre will become useless.

Mr. President : The original clause and the amendments are now open to discussion. I do not think there are any other amendments of which I have notice.

Mr. Mahomed Sheriff (Mysore State) : Mr. President, Sir, I have heard with rapt attention the admirable speech made by Sir N. Gopalaswami Ayyangar and also Mr. Ananthasayanam Ayyangar regarding this very intricate point. That it is a point which is full of complication admits of no dispute. I wish that in view of its complicated nature we had been given more time to study the pros and cons of this question, but as it has come before us and as you want us to give our opinion upon it, I think it is necessary for us to state, in our capacity as the representatives of the States, what our opinion is in this matter.

Sir, I do concede that so far as the President is concerned, in view of the fact that he is at the helm of the administration he should have the power of pardon and he should have the power of commuting sentences in respect of cases arising out of criminal jurisdiction. Situations may arise in which he should have to exercise clemency. But my submission to you, Sir, is that so far as this power is concerned, it must be confined to provinces only. If it is made to affect the sovereignty of the Rulers, I submit there would be a clash. The Congress Party times without number have stated that so far as the sovereignty of the people is concerned, it is not going to be affected. His Excellency the Viceroy in the statement that he made on 25th instant said that so far as the Rulers are concerned, they need not apprehend any danger. It was argued that so far as this right is concerned, it will confine itself to Federal subjects. Yesterday we discussed Part VI and there Clause 1 runs :

> "The Federal Parliament in legislating for an exclusively Federal subject may devolve upon the Government of a Unit, whether a Province, an Indian State or other area, or upon any officer of that Government, the exercise on behalf of the Federal Government of any functions in relation to that subject."

So when we say that so far as these Federal subjects are concerned, they could be administered by a Ruler, I don't see why we should take away from him the right of pardon, the right of commutation of sentences, etc., in criminal jurisdiction. So far as Mysore is concerned, His Highness the Maharaja has rarely exercised this prerogative. Everything

is left to the High Court. He does not interfere at all. So, even supposing this power is going to be vested in him, there is no possibility of it being misused. In view of this, I cannot make up my mind to agree with the amendment proposed by Sir N. Gopalaswami Ayyangar.

Shri Gopikrishna Vijayavargiya (Gwalior State): Mr. President, Sir, I have come to express my point of view here. I also come from a State and I think that in a Federation the sovereignty is divided and some of the sovereignty is given to the Federation also. Therefore, it is in the fitness of things that the right of pardon that is provided for the President of the Federation must remain and it is also not proper that Rulers should keep that sovereignty in their hands. When they are conceding their sovereignty in favour of the Federation in other matters, they should also concede this right. I therefore suggest that the amendment of Mr. Ananthasayanam Ayyangar and Sir N. Gopalaswami Ayyangar must be accepted.

Mr. K. Chengalaraya Reddy : Mr. President, Sir, after hearing the lucid and convincing speech of Sir N. Gopalaswami Ayyangar, I thought there would be no debate on the draft presented by him to the House; but I find that a certain difference of opinion has been expressed by one of my Hon'ble friends from Mysore. It will be seen that the draft as it was put in the memorandum originally was a very comprehensive one. It extended the right of pardon, etc., to all offences and it appeared to vest comprehensive powers in the President of the Federation, but I was one of those who thought that even the draft clause as it stood read along with Clauses 8 and 9 did not really give that comprehensive power but that that power had been governed by certain conditions. But an amendment was tabled by certain representatives from the States that this power of right of pardon, etc., to be vested in the President should be confined to offences committed in the provinces. Well, Sir, as a counterblast to that, if I may use that word, I had tabled an amendment that this power should be vested in the President in relation to offences against Federal laws.

Sir, I view the draft put forward by Sir Gopalaswami Ayyangar as a compromise draft which should satisfy all sections of the House. Well, Sir, we should not be carried away by loyalties which have been existing in this country till now. New loyalties are coming into being. When we are contemplating the loyalties to the States from which we come, let us not be oblivious to the fact that we have to be loyal to the Federation which we are creating now in this country (*hear, hear*). Our loyalties will have to undergo a change ; there must be a harmonising of our loyalties. Let us remember that the strength of the Units consists in the strength of the Federation and the strength of the Federation also consists in the strength of the Units. The two are reciprocal. Let us not run away with compartmental ideas and think of the strength of the Unit only or the strength of the Federation only. I would like to urge that we must think of the strength of the Unit and the strength of the Federation as an integrated strength. To the extent to which the States concede to the Federation, to that extent they will have to give the right of pardon, etc., to the President, in respect of offences against the Federal Laws. I would even go to the extent of saying that the President

[Mr. K. Chengalaraya Reddy]

of the Federation must be the supreme authority in respect of offences against Federal Laws. So I urge that the amendment of Sir Gopalaswami Ayyangar, being a compromise draft, should be acceptable to all sections of the House. If I may say so, let us not be more loyal to the king than the king himself. Even the Rulers of the Indian States who are going to come into the Federation will do so with their eyes open and prepared to accept the Federation with all its implications, and not with all kinds of reservations. On one or two matters like this, Sir, we must be quite plain-spoken. Let us not try to evade these issues. With respect to the Federal subjects—I have in mind now only Defence, Foreign Affairs and Communications—and with respect to offences against the Federal Laws, the supreme authority should be the President. This is the position which has got to be accepted if we view the whole problem from a liberal, statesman-like and patriotic point of view, and I do hope that no objection will be taken to the amendment moved by Sir Gopalaswami Ayyangar and which he has supported in such a lucid and cogent manner. I support his amendment without any reservation in the interest of the States, in the interest of the Federation and in the interest of India as a whole.

Mr. M. S. Aney (Deccan States): Sir, are the clause as well as the amendments under discussion?

Mr. President: Yes, the clause and the amendments.

Sir B. L. Mitter: Sir, I do not want to press my amendment and so ask leave of the House to withdraw it.

Mr. President: Does the House give Sir B. L. Mitter leave to withdraw his amendment?

Mr. Himmat Singh K. Maheshwari (Sikkim and Cooch Behar States): But Sir, there are others who have similar amendments, but have not moved them because Sir Mitter had moved his. Can I speak a few words Sir?

Mr. President: Certainly.

Mr. Himmat Singh K. Maheshwari: Sir, I heard the admirable speech of my *Guru* Sir Gopalaswami Ayyangar with great attention and respect but with due deference to him, I must say that I do not stand convinced. The main argument I think, which he made was that because the Governors of the Provinces will not have the power to grant pardon, the existing power of pardon enjoyed by the Rulers of the States should also be curtailed or withdrawn.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I am not sure that I put it in that form.

Mr. Himmat Singh K. Maheshwari: I stand corrected. He seems to think that this was more or less a question of sensitiveness On that point I am inclined to agree with him. After all, within the borders of the State the dignity of the Ruler has to be maintained and if you take away from him the power of dispensing justice which he htherto been enjoying, that dignity is adversely affected, even within the borders of the State. In his Press Statement of the 5th July, th

Honouble Sardar Patel gave the assurance to the Princes that our common objective should be to understand each other's point of view and to come to decisions acceptable to all and in the best interests of the country. In the light of this assurance, Sir, I venture to suggest that the framers of the draft should reconsider the entire position once more and see if a happy *via media* cannot be arrived at. The difficulty arises mainly in respect of one matter. The courts which will try the cases under the Federal Law will be the State Courts. The State Court convicts a person of an offence under the Federal Law and the conviction is upheld by the High Court of the State and then at the end of all this an outside authority grants pardon. In such a case, there is going to be a certain amount of complexity and a certain amount of uneasiness and possibly clash. In order to avoid this, Sir, it seems to me desirable that the constitutional experts should put their heads together once more. I for one do not desire a settlement or decision on this matter which would leave any sense of unpleasantness or which would cause any misunderstandings specially because some of the speakers before me hinted or suggested from their speeches that there was certain amount of excitement in the matter. So far as offences under the ordinary law are concerned, the question of powers does not arise at all. The original draft took away even that power. Now the draft has been amended and it has been made clear that offences under the ordinary laws shall remain the exclusive concern of the Rulers and the pardons under the ordinary laws of the land will remain the exclusive concern of the Rulers. But even this does not improve the position substantially. In the amended draft there is a clause which runs thus :

"Such power may also be conferred on other authorities by federal law."

It appears to be the intention that these powers may be conferred concurrently on the Governor of a province also. So far as the Rulers of States are concerned, there can be no question of conferring any power on them because they already exercise such power. In the light of this clause, therefore, it becomes all the more necessary to re-examine the entire position. I shall feel most grateful if the House will agree to a postponement of this clause to enable every one to reconsider his attitude.

Mr. K. M. Munshi (Bombay : General) : Sir, this is a matter of great constitutional importance and I submit it cannot be discussed from the point of view only of the rights of the Rulers of States or the Governors of provinces, or, for the matter of that, either the Criminal Procedure Code or the provisions of the present Government of India Act. As a matter of fact, Sir, as is well known, in a federation a citizen is related directly with the centre as regards his rights and obligations. The allegiance of every citizen, whether he is in an Indian State or in a province, will be direct so far as the Union is concerned. Federal Laws will operate upon every citizen directly, and an offence in relation to such a law is not merely an offence against the State or the province ; it is an offence against the Federal Government. And therefore a reprieve or pardon must as a matter of constitutional principle vest in the head of the Federation, that is, the President. And to that extent, I submit, the position is incontrovertible.

[Mr. K. M. Munshi]

All the acceding States when they come into the Federation form part of the Union, accepting the operation of Federal Laws in their States. They accept to that extent that the Federal Government is supreme in the sphere of Federal Law, and the President as representing the Federal Government can alone be the last and also the first authority who can grant reprieve or pardon. That is why in the American constitution as is well known, the President has been authorised to grant reprieve or pardon for offences against the United States.

A similar provision, I submit, is not only necessary from the poin of view of constitutional principle but also of expediency. Sir, the position is this. My Honourable friend Sir Gopalaswami Ayyangar has referred to the income-tax laws. But there may be other federal laws—laws relating to extradition, to naturalisation, to defence and external affairs, to treason against the Federal Government—which are matters of the most vital importance to the existence of the Centre ; and therefore the power of pardon cannot be given, I submit, to anybody except the hea f the Federal Government. If the right is given to either the Ruler of a State or a provincial Governor, the consequences will be, in a contingency, disastrous. Take for instance this. In principle the Governor or the Ruler—because they will be in the same position—will be entrusted with a part of the prerogative which must vest in the head of the Union as a whole and any part of it. This I submit, is inconsistent with principle. But apart from that there will be an inequality of treatment. Supposing in province 'A' the responsible ministry takes a particular view and advises the Governor to release a particular person ; there is no appeal from it. But then in another province a different view is taken. Therefore for the same offence you will find one provincial Governor giving pardon and in the other the Governor not giving a pardon. And let us not assume that the Rulers of States are going to be for ever and ever absolute little sovereigns that they think they are now. Many States have introduced an element of responsibility ; I have no doubt in my mind that the general progress of the country will soon compel every State to have some element of responsibility in its Government. And when that comes, it is not the Ruler who will exercise the right of reprieve and pardon but the ministry of the State who will advise the ruler, which will give a pardon. In a conceivable instance, therefore, it may be that it will not suit a province or a State to allow a particular kind of criminal to remain in jail. Take a case of war ; it has happened in Ireland and England but I do not want to go into cases. It has happened very often in war that different views have been taken in regard to certain offences against the State. What would happen if against the desire and against the policy of the Centre the heads of the units or the unit ministries take upon themselves to grant, reprieve or pardon ? If the policies of the State and the Centre are of different character and the former want to grant a reprieve for a set of offences—and reprieve, as you know, means postponement of a sentence —and if this power is not with the President but vested in the Governor or a Ruler, serious complications will arise. Therefore I submit that

a crime against the Federal Government is, really speaking, based upon the loyalty of each citizen to the Federal Government as a citizen of the Union as a whole. Therefore, pursuing that principle, the power of reprieve and pardon must vest in the President of the Federal Government and it cannot be parted with.

With regard to other matters, Mr. Ananthasayanam Ayyangar's amendment is there. If members desire that the provinces should have concurrent power with the President in regard to death sentences there is no difficulty. With regard to the States, I for one am not very keen that with regard to State laws the President should be vested with any concurrent power. But we must not forget a very important fact. There are States small and big. All the acceding States are not of the size of the large States whom you see represented on the front bench here. There are States which under the existing machinery of things are not entitled to pass a death sentence without the consent of some representative of the Paramount Power. Many small States, I know as a fact, even when they pass a death sentence are subject to influence being brought to bear upon them by the representative of the Paramount Power. Therefore it is to be considered by the country as a whole whether very small States who do not enjoy such power have to be given an unlimited power of passing death sentences and granting reprieve and pardon at their sweet will and without any control. These are complications on which there may be reference to a committee to be discussed fully. But on the first and fundamental question I submit it is interfering with the direct allegiance of a citizen to the Federal Government to take away the power from the President to grant reprieve and pardon in all cases relating to federal laws. That, Sir, is all I have to submit.

Sir Alladi Krishnaswami Ayyar : Sir, I should like to say a few words in support of the proposition so ably moved by Sir Gopalaswami Ayyangar and also in support of the amendment of Mr. Ananthasayanam Ayyangar. In the first place I am happy to note that the popular representatives of some of the States have come forward and have given their support to this proposition, namely, that it is a natural consequence of the federal system that the President of the Federation must have the inherent right of pardon.

An Honourable Member : Sir, may I know the insinuation behind the phrase "popular representatives" ? Are the others unpopular ?

Sir Alladi Krishnaswami Ayyar : I do not mean to say that the others are unpopular representatives but I do not recognise that officials are popular representatives because I believe that in the representation there are divisions in the case of certain States, between certain representatives of rulers and representatives of the people. Both of course represent the State but from a practical and common sense point of view there is a difference between the two sets of representatives. You may take it with that qualification or amendment if you like ; but there is no denying the fact that there is a very great distinction between these popular representatives in the sense in which I use that expression and all representative selected by the Government or the ruler.

Mr. H. Guruv Reddi (Mysore State) : We are all elected people and not nominated people.

Dr. B. Pattabhi Sitaramayya (Madras : General) : I rise to a point of order. These are collateral issues. I wish that side-issues are not raised and discussed and that you, Sir, may stop such a thing.

Sir Alladi Krishnaswami Ayyar : The States are entering as member of a Federal Union.

Sir B. L. Mitter : On a point of order, Sir. I have asked for leave to withdraw my amendment. Therefore the argument whether the States should have this power or not need not be pursued.

Sir Alladi Krishnaswami Ayyar : Some speeches have been made, by the representative of the Kathiawar States for instance, that the President should not have this power.

Mr. President : The difficulty is that although Sir. B. L. Mitter has asked for permission of the House to withdraw his amendment one Member has objected to this leave being granted. The matter has rested there.

Sir Alladi Krishnaswami Ayyar : If the amendment had been permitted to be withdrawn, most of the speeches made, including that of Mr. Munshi, would have been out of order. If there really is common agreement on the part of all, there need not have been a debate at all.

The first principle of a Federal system is that the Federal law is binding upon every citizen and there is a direct relation between the citizen and the Federal Government. And when there is a breach of that Federal law, the representative of the Federation, namely the President of the Federation, must have the inherent right to pardon any offence as against the Federal law. That is the principle of Sir N. Gopalaswami Ayyangar's amendment. There is no point in raising any issue as to sovereignty, because whatever the States might otherwise be, when once they accede to the Federation there is a *pro tanto* cession of sovereignty in regard to the subjects ceded to the Union. The States may console themselves that in regard to all other matters they have plenary powers of sovereignty, but, to the extent they cede to the Union they cease to be sovereign in respect of that matter. It is not *infra dig* for any State ruler or State people to think that there is a restraint on sovereignty in that regard, because that is the very essence of a federal compact. The great tates of the American Union are still sovereign in many respects ; but they are not sovereign in the federal sphere. That is the accepted principle in all Federal constitutions. The amendment here refers only to offences against the Federal laws. If any one has any objection to it, it must be the Provinces ; because uptill now, even in regard to Federal subjects, the Provincial Governments had the power of pardon. Only in order to bring the States into line with the Provinces on a Federal basis, the provincial representatives are willing to let the power of pardon in regard to Federal subjects being exclusively vested in the President of the Union. If there is a concession it is a cession on behalf of the Provinces. They are giving up a right which they have been hitherto exercising under the re-

uent Government of India Act. At the same time let it be clearly understood that when the Provincial Constitution is framed, there should be the power of pardon vested in the Provincial Governors in so far as the Concurrent subjects and the subjects in the Provincial list are concerned. There must be inserted a corresponding provision in respect of vesting the power of pardon in the Heads of the Provincial Governments so far as these subjects are concerned. Sir N. Gopalaswami Ayyangar has given an assurance, in the sense in which any spokesman in respect of any proposal can give, that this matter will be taken up at a later stage and an amendment moved in regard to that matter. This is so far as the provincial sphere is concerned.

Then the only remaining point is about death sentences. It was felt that, though logically you need not make any exception in regard to death sentences, having regard to the fact that a citizen of a province has enjoyed this privilege up to the present day, there is no reason why he should be deprived of that privilege of invoking the aid both of the Centre and province. That is the spirit of Mr. Ananthasayanam Ayyangar's amendment which I support.

Mr. Naziruddin Ahmad : Mr. President, Sir, I wish to deal with only one aspect of the subject which has created some amount of subdued heat. It is that we are considering the case of those States who are acceding to the Federation in regard to the three subjects of Defence, External Relations and Communications. It is the principle of all Federal constitutions that where there is any subject vested in a Federation the offences relating to that subject should also be within its jurisdiction. There are certain taxes which are necessary to be made over to the Federation in order to enable it to work those subjects vested in the Federation. As a matter of fact offences relating to those taxes should also naturally be dealt with by the Federation.

Now, Sir, I submit that when a State accedes to the Federation that State absolutely surrenders all its sovereignty and powers to the Federation and therefore, by necessary implication, it surrenders also its jurisdiction over offences relating to certain subjects and the offence against the taxation in relation to those subjects. If this be the case it is a voluntary act of cession. There should be no misunderstanding that this cession of power includes also the cession of sovereign rights as to pardoning and commuting of offences. In these circumstances I beg to submit that the whole controversy and the sentimental outbursts have arisen only out of a misunderstanding. I submit that if the problem is looked at from the point of view of cession of certain necessary powers, then of course it follows as a corollary that the power of pardon and other things must reside in the President of the Union. This is all I have to say on this subject.

Mr. Satyanarayan Sinha (Bihar : General) : Sir, the question may now be put.

Mr. President : The question is :

"That the question be now put."

The motion was adopted.

The Honourable Sir N. Gopalaswami Ayyangar : Sir, I have very little to say by way of replying to the debate. The points that were raised by some members in criticism of the amendment that I had moved have been very satisfactorily answered by other members. So there is really very little left for me to say.

As regards Mr. Ananthasayanam Ayyangar's amendment, there are only two points which need be mentioned. One of them is that, if his amendment is confined to the provinces alone as he has suggested, it would introduce a distinction between the provinces and the States. That is number one. The second point that I might mention is that we shall be taking away from the provinces some more of the power which my amendment would have conferred exclusively upon them but that is a small matter. If the House agrees that in the case of death sentences there should be concurrent authority for the President of the Federation in respect of provinces alone, I for one will not object to it. We shall leave the States alone, to take their own course in this matter.

Mr. President : I will now put the amendments to the vote. The first amendment is that moved by Mr. Ananthasayanam Ayyangar that at the end of the amendment moved by Sir Gopalaswami Ayyangar the following be added :

"Where any person has been sentenced to death in a province, the President shall have all such powers of suspension, remission or commutation of sentences as are vested in the Governor of the province."

The amendment was adopted.

Mr. President : Then, I will put to vote the amendment of Sir Gopalaswami Ayyangar, as amended by Mr. Ananthasayanam Ayyangar.

The amendment, as amended, was adopted.

Mr. President : I will put the original clause as amended, now, to vote.

Clause 7, as amended, was adopted.

Clause 14

Mr. President : We will now take up Clause 14.

The Honourable Sir N. Gopalaswami Ayyangar : Sir, I have already read this clause out to the House, and I do not think it is necessary for me to read it out again. A very large number of amendments had been tabled in respect of this particular clause, and naturally an attempt has been made to see if the various points of view represented in these amendments could be brought together and a sort of agreed arrangement placed before the whole House for unanimous acceptance. I have taken the liberty, Sir, of sending notice of an amendment this morning which I think represents an agreed solution of the difficulties, and if it is the wish of the House that I move that particular amendment and, if it is passed, the other amendments need not be moved, I am prepared to move it.

Mr. President : Please move it. Or do you think that we should take up the other amendments ?

The Honourable Sir N. Gopalaswami Ayyangar : If this is carried, I think there will not be any necessity for the other amendments to be moved.

Sir, the amendment which I beg to move is this :

"That for items (a),(b) and (c) of sub-clause (1) of Clause 14, the following be substituted :

"(a) The strength of the Council of States shall be so fixed as not to exceed one half of the strength of the House of the People. Not more than 25 members of the Council shall be returned by functional constituencies or panels constituted on the lines of the provisions in Section 18 (7) of the Irish Constitution of 1937. The balance of the members of the Council shall be returned by constituencies representing Units on a scale to be worked out in detail :

Provided that the total representation of Indian States does not exceed 40% of this balance.

Explanation.— A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In the case of Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.

(*b*) The representatives of each Unit in the Council of States shall be elected by the *elected* members of the legislature of such Unit and in cases where a legislature consists of two Houses by the *elected* members of the Lower House of that legislature.

(*c*) The strength of the House of the People shall be so fixed as not to exceed 500. The Units of the Federation, whether Provinces, Indian States or groups of Indian States shall be divided into constituencies and the number of representatives allotted to each constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 :

Provided that the ratio of the total number of Indian States respectivly to their total population shall not be in excess of the ratio of the total number of representatives for the Provinces to their total population.'

"2. That in sub-clause (1) of Clause 14, the following new item (e) be inserted :—

'(e) The fixing of the actual strength of the Council of States and of the House of the People, the distribution of the strength so fixed amongst the Units of the Federation, the determination of the number, nature and constitution of functional panels or constituencies for the Council of States, the manner in which the smaller States should be grouped into Units for purposes of election to the two Houses, the principles on which territorial constituencies to the two Houses should be delimited and other ancillary matters shall be referred back to and investigated by the Union Constitution Committee. After such investigation, the Union Constitution Committee shall submit to the President of the Constituent Assembly its recommendations as to the provisions relating to these matters which should be inserted in the draft text of the Union Constitution.'

Sir, I wish only to draw attention to the more important aspects of this draft amendment. Sir, the first point to which I should like to make a reference is that in this amendment we are definitely fixing the strength of the Council of States and in doing so we say that that strength should not exceed one half of the strength of the House of the People. I think, Sir, the House will agree that that is a fair proportion to fix. Now out of this strength that we so fix we propose to allocate 25 members to functional constituencies. In the draft, as originally placed before the House, it will be remembered that ten of the seats were to be filled by nomination by the President in consultation with universities and scientific bodies.

It has been felt by a very large number of people that that is not a sufficient provision for the purpose of getting on to the Council of States people who may not belong to universities or scientific bodies, but who

[The Honourable Sir N. Gopalaswami Ayyangar]

on account of their connection with very important sides of the Nation's activity, deserve to be on a body of that description. In this connection a reference has been made to Section 18 (7) in the Irish Constitution. As you know, the bulk of the Senate in the Irish Constitution is filled by functional constituencies of this description. These constituencies relate to the representation of culture, education, of trade and commerce, of agriculture, of labour, of social services and various other national activities of that description. Now the one important difference between the provision in the Irish Constitution and the provision that is proposed to be made here is that that principle will be applied only to a very small number of members of the Council of States. If we fix the maximum strength of the House of the People at five hundred, the maximum strength of the Council of States can only be two hundred and fifty. If out of that we take twenty-five for being filled by constituencies of this description, it only means about ten per cent. of the total strength, so that we retain the essential character of the Council of States, as originally planned. An overwhelming majority of members of the Council will be returned by units more or less on a territorial basis, but a very small number not exceeding ten per cent. will be returned by constituencies of this special description. There is also another limitation that we have placed on the representation of Indian States in the Council of States. This amendment says that the total representation given to Indian States should not exceed forty per cent. of the strength of the Council of States *minus* the number allotted to special constituencies.

Then, Sir, I would refer to item (b) in this new sub-clause. It practically reproduces item (b) in the original clause with this one important difference, namely, that the election should be by the elected members of the legislatures and that, if a unit legislature happens to have two Houses, the electorate will be the elected members of the Lower House of that legislature. Perhaps I might explain that I have retained the description 'Lower House' here in keeping with the description that has been used in other parts of this particular draft. The idea is not to retain this description of the Chamber that we all of us have in mind, but to find another description which would not be open to the same criticism.

Then, Sir, with regard to the House of the People the maximum strength is fixed at five hundred and the limits of one million and 7,50,000 which you find in the existing draft have been reduced to 7,50,000 and 500,000. Incidentally this accepts a number of amendments notice of which has been given which are more or less in the same terms.

Then, Sir, you come to the proviso to item (c). Perhaps some people might consider this is not very necessary, but, in order to allay fears, perhaps suspicions, it has been decided that it is desirable to put in a Proviso of this description. The House of the People is essentially a Chamber whose composition is based entirely on the population and it is only reasonable that the ratio which the number of Members representing the IndianStates bears to the total population of Indian States

should not exceed the ratio which the number of seats for the Provinces bears to the total population in the Provinces. So I do not think it needs any justification. Any special treatment which we desire to give to units of the Federation, whether Provinces or Indian States—that treatment will be provided for in the composition of the Council of States.

Then, Sir, having stated these general principles as regards the composition of the two Houses, it is necessary that they should be elaborated and should be put in a form which could go into the draft Constitution for the future. A good deal of spade work will have to be done in this connection, fixing the actual strength of the two Houses, the way in which that strength should be distributed amongst the units, the kind and composition of the special constituencies and the principles on which territorial constituencies in Indian States should be delimited —all these are very important things on which the Constitution will have to lay down certain fundamental principles and for that purpose I have introduced an additional item (e) which assigns to the Union Constitution Committee the task of investigating these problems in some detail and then proposing clauses or sections which could be embodied in the new draft Constitution.

That will certainly come up before the House for discussion. The Report of the Union Constitution Committee will be made to the President and then the Report becomes really the property of the House. If it is so decided that this report should be discussed in the House before the actual recommendations of the Committee are put into the draft text, that discussion can be held at the future session. But if the House should agree that the recommendations of the Union Constitution Committee as regards these matters can straightaway go into the draft text of the Union constitution, the House will still have an opportunity of examining the merits of these provisions when it comes to debate the text of the constitution.

Sir, I move this amendment.

Mr. President : I have got a number of amendments to this clause. I shall take these amendments now one after another.

(Messrs. Jagat Narain Lal, H. V. Pataskar, B. M. Gupte, R. M. Nalavade, Seth Govind Das and G. L. Mehta, did not move their amendments, Nos. 232 to 237.)

Dr. Mohan Sinha Mehta (Udaipur State) : I withdraw my amendment (No. 238.)

Col. B. H. Zaidi (U. P. States) : I withdraw the amendment (No. 238.)

Maharaj Nagendra Singh (Eastern Rajputana States) : Mr. President, Sir, the amendment of Sir Gopalaswami Ayyangar meets the view point of small States admirably and he ought to be congratulated on this amendment because it creates effective democracy. After all, Sir, the greatness and balance of a constitution lies in its portraying with the minutest attention to detail the various entities and intriests hat lie in the country at large. The amendment will certainly achieve

[Maharaj Nagendra Singh]

this object and I wholeheartedly support it. I, therefore, withdraw my amendment, Sir, but I request that as far as the consideration of the allocation of seats *inter se* between the States is concerned there should be some representatives of the small States in the Union Constitution Committee. The grouping of small States and the formation of constituencies will affect these States vitally and it is therefore important from the point of view of these States that there should be a representative of the small States in the Union Constitution Committee to express their views.

I withdraw my amendment (No. 239).

(Messrs, Rai Saheb Ragho Raj Singh and H. J. Khandekar did not move their amendments, Nos. 239 and 240.)

Shri Himmatsingh K. Maheswari : I withdraw amendment No.241.

(Amendments Nos. 242 to 260 were not moved..)

Shri Vishwambhar Dayal Tripathi (United Provinces: General) : *[Sir, I do not propose to move my amendment, as it is covered by the resolution of Sir Gopalaswami Ayyangar.]*

(Amendment No. 262 was not moved.)

(Sir V. T. Krishnamachari did not move his amendment No. 263).

Mr. President : I take it that none of the other Ministers are moving

Sir V. T. Krishnamachari (Jaipur State): Yes.

(Amendments Nos. 264 to 271 were not moved.)

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

"That sub-clause (2) of Clause 14 be deleted."

The simple purpose of this amendment is that the sub-clause refers to a schedule which is not yet in existence. If we agree to sub-clause (2) it would be signing a blank cheque or a transfer deed without a schedule. I submit that this is a difficult thing to do.

Then, I find after the amendment of my Honourable friend Sir Gopalaswami Ayyangar this amendment is in an anomalous position. After we gave notice of a large number of amendments the original clause has been re-drafted and put forth here on the floor of the House. We have had no opportunity of considering the draft. I have no particular objection to the revised draft which has been submitted for consideration. But still I should think that perhaps it would have been better to give us some time to consider this important subject. A draft of such intricate nature like this, containing important constitutional principles cannot be easily handled at a moment's notice. I therefore respectfully submit that, as in any other important case, some time should be given for consideration of the subject and then it would be easy for us to submit amendments. It may be that we would fully agree with the principles; but still, for the sake of safety, it would be better to give us some time. I hope the Honourable member will kindly consider the difficulty in which some of us have been placed and postpone the subject for further consideration. This is a very important subject and its importance justifies the suggestion.

(Amendments Nos. 273 to 278 were not moved.)

*[ ]*English Translation of Hindustani speech.

Prof. Shibbanlal Saksena (United Provinces: General) : Mr. President, Sir, my amendment to sub-clause (4) of Clause 14 runs as follows :

"That in sub-clause (4) of Clause 14, for the word 'one-third' the word 'one-half' be substituted."

In accordance with the present provision in sub-clause (4) of Clause 14, one-third of the members will retire every second year. Now according to the time-table which we have laid down, the life of the House of the people shall be of four years' duration, and a new House of the People as well as new provincial legislatures shall be elected every fourth year in the normal course of things. What I want is that in the Council of States as well instead of one-third of the members being elected every second year, one half of the members should be elected every second year. In this manner we shall be having a new Council of States every fourth year. It may be argued that the Lower House may be dissolved before their full terms expire, and the four year cycle may not recur. But dissolution, I am sure, will not be a normal feature in the life of the legislatures ; and even if one or two legislatures in the provinces are dissoloved before their full terms, the four year cycle will not be materially disturbed at least during the present century.

An Honourable Member : On a point of information, is he going to move the amendment ?

Prof. Shibbanlal Saksena : Yes, Sir. I move it.

According to the amendment of Sir N. Gopalaswamy Ayyangar the States will have a fairly large representation in this House and, as is well known the Lower Houses of the States have a majority of nominated members, so a majority of the members will be Rulers' representatives. Therefore what I want is that this House which will have a fairly large number of reactionary members, should not be a House which should be continued for very long intervals. I want at least half of this should change every second year and then it might not be so reactionary. I have already voiced my opposition to second Chambers before but if we are to have them, at least we should have a change of half of the members every second year so that in the 4th year the whole Council of States will be changed.

(Amendments Nos. 280 to 299 were not moved.)

(Amendments Nos. 13 to 16 in Supplementary List No. I, Amendments Nos. 10 & 11 in Supplementary List No. II, and Amendments Nos. 4 to 6 in Supplementary List No. III were not moved.)

Begum Aizaz Rasul (United Provinces : Muslim) : Sir, the amendment standing in my name is—

"That in sub-clause (1) (d) of Clause 14, the following be added at the end :—

'by a system of proportional representation by single transferable vote.'

Sir, I do not propose imoving this amendment at the present moment in view of the amendment moved by Sir N. Gopalaswamy Ayyangar I hope that this very important aspect of the question as to the method of election to the Council of State will be considered by the Union Constituion Committee in order to safeguard the interest of minorities. do not wish to move this amendment at this time, Sir, because of the

(Begum Aizaz Rasul)

great possiblility of getting a negative vote on it in case the House rejects it but I reserve to myself the right of moving this amendment later on, if need arise.

Mr. President : There is another amendment in your name.

Begum Aizaz Rasul : There is another amendment standing in my name:

"That in sub-clause (4) of Clause 14, for the word second the word third be substitued."

Sir, The clause will then read. :

"The Council of States shall be a permanent body not subject to dissolution, but as near as may be, one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in Schedule—"

Sir, my object in moving this amendment is that I feel that the period of two years is a very short period for a Legislator. As soon as he becomes conversant with the business, gets to know legislative work, and settles down to it he will have to retire. To my mind this is not very fair and he ought to have a slightly longer period in which to show his worth and do justice to the House to which he is elected.

Sir, if my amendment is accepted it will mean that the House being a permanent body, one-third of the members retiring every three years, it will be a rotation of nine years. As most Honourable Members are aware, this is the system at present prevailing under the Government of India Act of 1935. Therefore, people in India are not unfamiliar with this system. I feel that this system , as it has been working for the last ten years in this country, has proved absolutely satisfactory. Sir, in the constitutions of most of the western countries there are two Houses of the Legislature; Members of the Upper House are mostly either life members or the life of that House also synchronises with the life of the Lower House. It is only in the United States Senate that one-third of the members retire every second year. I however feel that it is not necessary that we in India should try to copy the system that prevails in the United States because, for one thing, the members of the U. S. Senate are chosen by popular vote whereas for the Council of States that is envisaged by the Union Constitution these members will not be elected by direct election but will be elected by the members of the Lower House. Sir, another strong point that I wish to make in support of my contention is that I do not think that the members of the Lower House should elect members to the Council of States twice in their term of membership and I think this right should only be exercised once. If this provision stands as at present, and if the members of the Upper House have to retire every second year, that means that the members of the Lower House will have the right to elect twice in their lifetime members to the Upper House. With these few words, I commend my amendment to the consideration of the House. I feel it is a very fair amendment and hope it will be accepted.

Mr. President : The clause and the amendments are now open for discussion.

Mr. Jainarain Vyas (Jodhpur State) : Mr. President, Sir, I rise to support the fresh proposals recently put forward by Sir N. Gopalaswamy Ayyangar, but while doing so, I would like to offer a few remarks on the

subject matter. When we support these proposals, it should not mean that we feel that the proposals will favourably affect the people of the Indian States. We support these proposals purely on political grounds. When these proposals are accepted, fourteen more States will come in the Lower House. These 14 States will include four States of Kathiawar, seven of the Eastern States, one from Rajputana, one from Assam and one from Simla Hill States. I am very glad to observe that four maritime States, Junagadh, Nawanagar, Bhavnagar and Cutch will find their place in the Lower House on account of these proposals and the border State of Manipur will also come in. So, from that point of view, it is a very good thing to increase the membership of the Lower House as has been done. Sir Gopalaswamy Ayyangar while putting forward Clause I (b) said that only elected members of the Legislatures in the Lower House will be able to vote for the election of the Lower House. I mean the elected members of the Legislative Assemblies of the States. There is some confusion in the words "elected members" because when we think of the elected members of the Lower House of our Union, we think that these are elected on the basis of adult franchise, but in Indian States things are not so. I know of a State in Punjab where the son of a Ruler is an elected member of the Assembly and his wife also finds a place among the elected members, and Sir, they are unfortunately both Ministers or rather, they are "popular ministers" of the Assembly. So this is how elected members and elected "popular ministers" come in through the Lower House of the Assembly in States. There is a State which has got an elected member on the basis of four members in the constituency. So he is also an elected member. I know of another State which has got ten jagirdars out of about fifty elected members in the Lower Houss or in the Legislative Assembly.

That way, the elected members of the Assembly do not mean really elected representatives because they are not elected on popular franchise or on adult franchise. Sir, I want to bring these instances to your notice and through you, to the notice of the House, so that when a draft is being prepared those who are at the helm of affairs in drafting the constitution will see that truly elected members come in, not members elected on bogus franchise in bogus legislatures as they exist in some of the States.

One thing more I would like to bring to your notice and that is, then popular representatives of the States have got no place in the Union Constitution Committee of this House, and when the rules or clause are framed their opinion does not come up before the Constitution Sub-Committee. I hope, Sir, when there is a vacancy in the Union Constitution Committee, the claim of the popular elements will be considered and, if necessary, the strength of the Committee will be increased in order to find a place for the popular members from the States.

With these remarks, Sir, I commend Sir Gopalswami Ayyangar's proposal to the House. I hope, Sir, my request will be considered when the real drafting is taken in hand.

Pandit Hiralal Shastri (Jaipur State) :*[Mr. President, I had no intention to participate in the debate today. But when Sir Gopalaswamy Ayyangar stated that the amendment he was moving had the unanimous support of the House, I felt that I must say something about it.

With all respect, I ask Sir Gopalaswami as to how his amendment has the unanimous support of the House. So far as I know, all the representatives of the States people present in the House are of the opinion that the original proposal in the report of the Union Constitution Committee should stand. Again, I wish to know why the strength of the Upper and the Lower Houses should be increased. We have often passed a resolution in the all India States Peoples' Conference, that larger States should join the Indian Union separately while the smaller ones should join the Indian Union in a group. The standard and the qualifications we have fixed for the States joining the union are sufficiently high. According to our standard, a state with a population of 5 million and having a revenue of 30 millions can join the union individually. We were satisfied to note that for election to both the Houses, the minimum population limit was fixed at a million. Many attempts were made and many amendments were brought in to reduce this limit to a quarter million but in vain. I clearly see that behind the proposed amendment, of reducing the limits of one million and 750,000 to 750,000 and 500,000 respectively, underlies the policy that some State, with a population of more than half a million may get representation not only the Upper House, but also in the lower House I do not like this. Therefore, I have not agreed to the proposal. There is no unanimous support of the House. Sir Gopalaswami Ayyangar possibly was the author of the original proposal in the report and if it is true that he himself is moving amendment to the original proposal, I do not think it proper to oppose him. However, I cannot but express my feelings in this connection. When our country is going to be politically a Union, inspite of the division, when differences between provinces and States are being removed, I do not think it proper that small States should come into the Union as separate entities. I disapprove of the idea of small States coming into the Union as separate entities, for I know that if separate units of these small States are formed, that would only be for the purposes of elections. I know that this will go contrary to the proposal of grouping and States will get all opportunities for coming in as individual units. If we intend that the small States should come into the union in groups, they should be allowed the minimum opportunity to exercise their franchise as individual units for election to this House. According to our original proposal only fiteen states were to participate in the Assembly elections as individual units. But because their representatives have been recognised and because of this and other amendments by the States, fifteen other States will now come in as individual units and this is the number of small States joining as individual units will be increased. Besides this, a provision has also been added. The amendment of Sir N.Gopaswami considers many vital matters of detail regarding the formation of units and delimitation of constituencis etc. This matter will go up

* English translation of Hindustani speech.

before the Union Constitution Committee where the final decision will be taken on it. I am very sorry to have to say in this connection that so far no representative of the States people has been taken in the said Committee. However, this is not the point. We are discussing here a very important and vital matter and our decision will be placed before the Union Constitution Committee. Maharaj Nagendar Singhji has demanded here that the small States must be represented on this Committee. I do not know as to how many representatives will be takin but I must voice our demand that representatives of the States people must also be taken on this Committee. Many matters of great importance will be discussed in the Committee and decision thereon taken; and hence a representative of the States people must be there to voice their opinion. I give this particular warning to the House that the smaller States should not be individually allowed to come in as representatives of each separate unit. The more they are grouped the better it is. I have reasons to say this. However, I do not think it proper to go into controversies over this. One is greatly pained and astonished to hear of the atrocities and represssion going on in those small States. The States people are very miserable on account of the atrocities of the authorities. Many of the States that have joined this Assembly whether individually or in groups feel as if they have obliged our leaders and the National Congress by doing so. I do not like to say any thing against it but in the manner the smaller and the bigger States have joined the Assembly, they feel as if they have been given a written authority to have absolute power over their people. Thus they have not only begun to exercise their absolute authority over the people but have also begun to oppress them. If we enquire into the important news of the States, appearing every day with pictures on the front pages of the newspapers, we would find that great atrocities are committed on the people by the State authorities. This is not the proper time to say all this but I had to give vent to my heartfelt pain at some time. Syt. Vyas has just stated that the State authorities are generally interfering with elections. Therefore, I would like to draw the particular attention of Sir Gopalaswami to this and request him to see that when the constituencies and the units are formed the smaller States do not come in as individual units in large numbers and that the viewpoint of the representatives of the States peoples is also somehow secured.

I do not oppose the motion but wish to state that at least the voice of the States subjects must not be ignored. I would also appeal to the Honourable the President to see that the representives of the States subjects should be included in the Committee.*

Mr. Satyanarayan Sinha : The question be now put.

Mr. President : The question is :

"That the question be now put."

The motion was adopted.

Mr. President: I shall now put the amendments. I shall first put the amendments of Sir N. Gopalaswami Ayyangar. The question is:

* English translation of Hindustani speech].

(Mr. President)

1. That for items (a), (b) and (c) of sub-clause (1) of Clause 14, the following be substituted :

"(*a*) The strength of the Council of States shall be so fixed as not to exceed one half of the strength of the House of the People. Not more than 25 members of the Council shall be returned by functional constituencies or panels constituted on the lines of the provisions in section 18(7) of the Irish Constitution of 1937. The balance of the members of the Council shall be returned by constituencies representing Units on a scale to be worked out in detail :

Provided that the total representation of Indian States does not exceed 40% of this balance.

Explanation.—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In the case of Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.

(*b*) The representatives of each Unit in the Council of States shall be elected by the *elected* members of the legislature of such Unit and in cases where a legislature consists of two Houses by the *elected* members of the Lower House of that legislature.

(*c*) The strength of the House of the People shall be so fixed as not to exceed 500. The Units of the Federation, whether Provinces, Indian States or groups of Indian States, shall be divided into constituencies and the number of representatives allotted to each constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 :

Provided that the ratio of the total number of Indian States' representatives to their total population shall not be in excess of the ratio of the total number of representatives for the Provinces to their total population."

2. That in sub-clause (1) of Clause 14, the following new item (e) be inserted :

"(*e*) The fixing of the actual strength of the Council of States and of the House of the People, the distribution of the strength so fixed amongst the Units of the Federation, the determination of the number, nature and constitution of functional panels or constituencies for the Council of States, the manner in which the smaller States should be grouped into Units for purposes of election to the two Houses, the principles on which territorial constituencies to the two Houses should be delimited and other ancillary matters shall be referred back to and investigated by the Union Constitution Committee. After such investigation, the Union Constitution Committee shall submit to the President of the Constituent Assembly its recommendations as to the provisions relating to these matters which should be inserted in the draft text of the Union Constitution."

The amendments were adopted.

Mr. President : There are some more amendments which were moved. I shall put Mr. Naziruddin Ahmad's amendment. The question is :

"That sub-clause (2) of Clause 14 be deleted"

The motion was negatived.

Mr. President : There is another amendment by Mr. Shibban Lal Saksena, which I shall put. The question is :

"That in sub-clause (4) of Clause 14, for the word 'one third', the word 'one half' be substituted."

The motion was negatived.

Mr. President : I shall now put the amendment moved by Begum Aizaz Rasul. The question is :

"That in sub-clause (1) of Clause 14, for the word "second" the word "third" be substituted.

The motion was negatived.

Mr. President : I shall now put the original clause as amended by Sir N. Gopalaswami Ayyangar's amendment which has been adopted. The question is :

"That Clause 14, as amended, be adopted."

The motion was adopted.

Mr. M. S. Aney : There is a note under this clause and in that note the different Provinces and States are named. I find among the names the name of the Central Provinces mentioned as 'C. P.' The name of the Province under the Act under which it was formed is "C. P. and Berar". That name is also reproduced in some other clauses which we have already passed. So I think this might be a clerical mistake. But I do want to bring this fact to your notice and to the notice of the House. When the final draft is made, if the Note happens to be there, the proper name of the Province should be given as "the Central Provinces and Berar".

Mr. President : I think that is a slip because in the Schedule it is correctly stated.

Part X

Mr. President : We shall now take up part X.

The Honourable Sir N. Gopalaswami Ayyangar : Sir, I may here request your permission for asking that the moving of this Part be postponed because some of the amendments have raised a very important issue as to what provision should be made for giving Provincial Legislatures some constituent power for amending the Constitution of the Province. That requires some consideration. Therefore, if you permit, we will take up this matter at the next session.

Mr. President : The consideration of Part X will be held over.

Part XI

Mr. President : We shall take up Part XI.

The Honourable Sir N. Gopalaswami Ayyangar : The first clause in Part XI runs as follows :

"The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as regards all property, assets, rights and liabilities".

I request your permission to move this clause with a verbal addition which would bring the terms of this clause up-to-date with reference to recent happenings. Since this clause was drafted Parliament has passed an Indian Independence Act. Under the powers given by that Act, very comprehensive adaptations of the Government of India Act are being ordered by the Governor-General. So at the time we shall be bringing this new Constitution into force it will be the Government of India Act, 1935, as adapted. Therefore, if you will permit me to do so I would move :

"That after the words 'the Government of India Act, 1935' in Clause 1 the words 'as adapted under the provisions of the Indian Independence Act' be added."

Mr. President : Clause 1 has been moved with some alteration. We have got several amendments of which I have received notice.

Shri K. Santhanam(Madras : General): Sir, I want to know if that expression has been substituted.

The Honourable Sir N. Gopalaswami Ayyangar : The Clause will read after my amendment as follows :

" 1. The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act, as regards all property, assets, rights and liabilities."

Shri K. Santhanam : I do not move my amendment No. 401.

Mr. President : The clause that has been moved as amended is this :

" 1. The Government of the Federation shall be the successor to the Government of India established under the government of India Act, 1935, as adapted under the provisions of the Indian Independence Act, as regards all property, assets rights and liabilities ".

Shri K. Santhanam : The difficulty is that the Indian Independence Act must take precedence over the Government of India Act of 1935. Therefore, it will not be correct to put the latter first. The order will have to be reversed.

Mr. President : The 1935 Act is adapted.

Shri K. Santhanam : The Act in operation is the Indian Independence Act. The adaptation is under the Indian Independence Act.

The Honourable Sir N. Gopalaswami Ayyangar: May I explain the point? After all, Sir, the Indian Independence Act is largely an enabling Act', the Constitution under which we shall work from the 15th August 1947 onwards will still be the Government of India Act, 1935, as adapted by the Orders which the Governor-General has been empowered to issue under the Indian Independence Act.

Shri K. Santhanam : I do not think it will be legally correct. We will be working under the Indian Independence Act or under the Government of India Act, 1935, in certain respects.

Sir Alladi Krishnaswami Ayyar : I think Mr. Santhanam is right. The real Constitution will be the Dominion Constitution. We are adapting certain provisions of the 1935 Act to suit the Dominion Act. The future Government will be the successor of the Dominion Government.

The Honourable Sir N. Gopalaswami Ayyangar : Sir, I bow to the legal opinion though I do not feel convinced. I doubt its correctness.

Shri K. Santhanam : Suitable arrangements may be made.

Mr. President : Though there is no difference in meaning, there is a dispute. You had better leave it to Sir N. Gopalaswami Ayyangar to put it in proper form.

As Messrs. Nijalingappa, Krishnamoorthy Rao and Ananthasayanam Ayyangar are not moving their amendments, I will put Clause 1 of part XI to the vote.

The question is :

"That Clause 1, as amended, of Part XI be adopted."

The motion was adopted

CLAUSE 2

The Honourable Sir N. Gopalaswami Ayyangar : Sir, I move:

"2. (1) Subject to this Constitution, the laws in force in the territories of the Federation immediately before the commencement of the Constitution shall continue in force therein until altered, or repealed, or amended by a competent legislature or other competent authority.

(2) The President may, by, Order provide, that as from a specified date any law in force in the Provinces shall, until repealed or amended by competent authority, have effect subject to such adaptations and modifications as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution."

These are necessary to keep the existing Acts in force.

(Shri Jainarain Vyas did not move his amendment No. 404).

Mr. Naziruddin Ahmad : Mr. President, I beg to move :

"That in sub-clause (2) of Clause 2, for the words 'by competent authority', the words 'by a competent authority' be substituted."

Sir, this is only a drafting amendment.

Mr. S. V. Krishnamurthy Rao (Mysore State): Mr. President, this is only an enabling provision similar to the one provided for the Provinces This has references to such of the States as accede to the Union. My amendment runs thus :

"That in sub-clause (2) of Clause 2, after the word 'Provinces' the following be inserted :

'and such of the States as are parts of the Indian Dominion as per provision Section 2, Clause 4 of the Indian Independence Act of 1947' ".

I hope the Mover of the Clause will accept this amendment.

Mr. President : As there are no other amendments to this Clause and as no Member wishes to speak, Sir N. Gopalaswami Ayyangar may reply to the debate.

The Honourable Sir N. Gopalaswami Ayyangar : Mr. President, Mr. Naziruddin Ahmad's suggestion is a drafting amendment. But I am not sure that it is a drafting improvement. I would rather retain "competent authority" in the place of "a competent authority".

As regards the amendment of Mr. Rao, I think that if the representatives of Indian States are prepared to agree, I am prepared to accept it. But I am afraid the question will require to be very carefully examined before we can agree to it. I would rather that the clause is left alone and the matter examined later.

Mr. President : I will now put the amendments to the vote. The amendment of Mr. Naziruddin Ahmad is ;

"That in sub-Clause (2) of Clause 2, for the words 'by competent authority' the words 'by a competent authority' be substitued."

(The amendment was negatived.)

Mr. S. V. Krishnamurthy Rao : Sir, I withdraw my amendment.

Mr. President : Mr. Krishnamurthy Rao withdraws his amendment I take it that the House gives him leave to withdraw it.

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

Mr. President : Then I will put the clause to vote.

The motion was adopted.

CLAUSE 3

The Honourable Sir N. Gopalaswami Ayyangar : Sir, Clause 3 runs as follows :

"Until the Supreme Court is duly constituted under this Constitution, the Federal Court shall be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court :

Provided that all cases pending before the Federal Court and the Judicial Committee of the Privy Council at the date of commencement of this Constitution may be disposed of as if this Constitution had not come into operation."

That is to say, cases pending before the Judicial Committee at the inception of this Constitution will continue to be disposed of by that Committee. Sir, I see that there are certain amendments to effect improvements in this clause. I shall be prepared to accept the amendment of which Sir Alladi Krishnaswami Ayyar has given notice.

(Messrs. K. Santhanam, Biswanath Das and Thakur Das Bhargava did not move their amendments, Nos. 407, 408 and 409.)

Shri Jaspat Roy Kapoor (United Provinces : General): I am not moving No. 410 in view of SirAlladi's amendment.

(Mr. R. K. Sidhwa did not move his amendment No. 411.)

Sir Alladi Krishnaswami Ayyar : My amendment runs in these terms :

"That for the Proviso to Clause 3, the following be substituted:

'On and after the coming into force of this Constitution, the jurisdiction of the Judicial Committee of His Majesty's Privy Council to entertain and dispose of appeals and petitions from any Court in the Union of India, including the jurisdiction in respect of criminal matters in the exercise of His Majesty's prerogative, shall cease, and all appeals and other proceedings pending before the Judicial Committee of the Privy Council shall stand transferred to, and be disposed of by, the Supreme Court. Further provision may be made by the Parliament of the Federation to implement and give effect to this provision.,"

Sir, in commending this amendment for the acceptance of the House I should like to make a few observations. Even in the British Commonwealth, judicial autonomy is recognised as necessarily incidental to the new status which the Dominions have attained. In Australia, there is no right of appeal at all except with the leave of the High Court of that country. In Canada, under recent legislation, the right of appeal from the Supreme Court of Canada both in civil and criminal cases has been abolished. In South Africa, under the South African Constitution, there is no right of appeal to the Judicial Committee. If that is the position even in regard to the Dominions within the British Commonwealth, it is inconceivable that there should be any retention of jurisdiction in the Judicial Committee after India has become a Republic and the constitution we are enacting comes into force. There has necessarily to be an automatic cessation of jurisdiction in regard to pending appeals. It is inconceivable that what is in effect a foreign Court should be in a position to reverse or modify the decisions of Indian tribunals. The Supreme Court to be established is the only final Court of Appeal for all

India, and it is but proper that all pending cases should be transferred to the Supreme Court. The point has been raised in certain quarters whether we could direct the transfer of records from the Judicial Committee. All that we enact is that cases do stand transferred, that hereafter the Supreme Court will have the jurisdiction to deal with all these cases. I do not believe that the Judicial Committee will fail to act in aid of our legislation. As a matter of fact there are very few original records in the custody of the Judicial Committee. If there is any difficulty in regard to procedure and other matters federal legislation will be enacted. That is the object of the latter part of this amendment. I therefore ask the House to accept the amendment.

Sri M. Ananthasayanam Ayyangar: I am not moving my amendment No. 11 in supplementary List IV.

Mr. President: I think there is only one amendment now.

The Honourable Sir N. Gopalaswami Ayyangar: I accept the amendment of Sir Alladi Krishnaswami Ayyar.

Mr. President: The amendment is accepted by the Mover of the clause. I will now put it to vote.

The amendment was adopted.

Mr. President: I will now put the clause, as amended by Sir Alladi, to vote.

Clause 3, as amended, was adopted.

Mr. President: We have only two minutes now, and . . .

The Honourable Sir N. Gopalaswami Ayyangar: There are only two or three clauses left.

Mr. President: If the wish of the House is that we should complete these clauses, I have no objection, but there is a meeting of the Advisory Committee at 2-30 P.M., and members might like . . .

Sri M. Ananthasayanam Ayyangar: Thinking that the Assembly would sit today only up to 1 o'clock, we have already booked our berths for today.

Mr. President: Does the House want that the consideration of the remaining clauses should be taken up in the next session?

Many Honourable Members: Yes.

Mr. President: Then the consideration of the remaining clause is held over.

ANNOUNCEMENTS BY THE PRESIDENT

Mr. President: Before we disperse, I have some announcement to make. There was notice of a resolution by Rajkumari Amrit Kaur about Khadi being used for the National Flag. The notice of the resolution came at a time when we could not call a meeting of the Steering Committee, and so we could not place it before the House. But I may inform the House that so far as this Constituent Assembly is concerned, there will be no Flag used which is made of anything

[Mr. President]

else but Khadi. It is also the policy of the Government which has been communicated to the Provincial Governments also that all National Flags should be made only of Khadi that is to say, of hand-spun and hand-woven cloth, whether it is of cotton, of wool, or silk or of any other material.

Yesterday, the House passed a resolution asking me to appoint a Committee to prepare a draft constitution for the Chief Commissioners' provinces, and I have pleasure in announcing that I have appointed the following Committee for that purpose:

Sir N. Gopalaswami Ayyangar.
Dr. Pattabhi Sitaramayya.
Mr. K. Santhanam.
Mr. Deshbandhu Gupta.
Mr. Mukut Bihari Lal Bhargava.
Mr. C. H. Poonacha.
Mr. Hussain Imam.

There is one other important matter to which reference was made in the earlier part of the debate with regard to which I have to make certain announcements, *i.e.*, the Function on the 15th. The programme which we have thought of is this:

That on the night of the 14th and 15th just at midnight, we have a session of this House, and at that time just as the clock strikes twelve, we either start our Proceedings or end our Proceedings by which we take power under the New Act which has been passed and either by a Resolution or otherwise, we authorise the Leader of the House to proceed to Lord Mountbatten and to request him to accept the Governor-Generalship and thus regularise his appointment as Governor-General as being made at our request and the Leader of the House will also communicate to him at that hour the names of the Members of the Cabinet, which he will constitute. That will be the Proceedings at night. The next morning we have a session of this House at 10 o'clock here and that will be attended by the Governor-General and here we shall have some sort of a formal ceremony—the actual handing over of power to us.

Mr. M. S. Aney: On the 15th?

Mr. President: That would be the midnight of the 14th and the early morning of 15th.

Shri Balkrishan Sharma (United Provinces: General): That will be our D Day.

Mr. President: As regards the details of the programme for the night session or for the morning session, we have not yet worked out all the details, but I propose to work out the details in consultation with Members like Pandit Jawaharlal Nehru and some others who will be available here.

Mr. B. Das (Orissa: General): What about the Finance Committee in regard to financial distribution?

Mr. President: Let me first complete this thing.

As regards the admission of visitors, as Members are aware, we have very limited accommodation in this House. There has been a demand made on behalf of Members, that we should allow them to bring their own guests, of course, under the ordinary conditions of cards being issued by us. It will be necessary also to invite to that function representatives of foreign countries who are here, the Consular representatives and others and some of the higher Civil and Military authorities of the Government of India will also have to be invited. The Press will naturally like to be present in full strength on that occasion. It will therefore be very difficult to accommodate all who desire to come and attend the function, but I hope the House will leave it to us to work out some programme by which we shall accommodate, as fairly and equitably as possible, as many as we can.

An Honourable Member: Can two cards be issued for every Member?

Mr. President: If we allowed two visitors to each Member, and we do not allow anyone else even then we shall have no accommodation.

Shri Gopikrishna Vijayavargiya: At least one card for every Member.

Mr. President: On the 14th night visitor passes will be allowed on the usual conditions in the usual way.

Shri Mahavir Tyagi: (United Provinces: General): Can you not kindly spare this House the part of the programme according to which we are required to invite Lord Mountbatten to be our Governor-General in future; because this House has never discussed that question; nor has the House passed so far, any Resolution, nor agreed to the idea, of Lord Mountbatten being the Governor-General of India? The rest of the programme may proceed as it is.

Mr. President: If the Honourable Member is so anxious, I shall put this matter to the House for discussion. (*Many Honourable Members*: No, no). That was at least my impression, but if the Honourable Member wants it, I shall put it to the House.

Mr. Shankar Dattatraya Deo (Bombay: General): What is the proposition, we have not understood. Let us understand what is his proposal.

Mr. President: I had chalked out a programme which I indicated in the earlier part of my statement. One Member says that we should not raise the question of Lord Mountbatten being the Governor-General because the House has not considered it. I said that if he is anxious, I shall put it to the House.

Many Honourable Members: No, no. It must be left to the President.

Pandit Govind Malaviya (United Provinces: General): Sir, without going into the merit of the question at all may I say that it seems to me that what the Honourable Member meant was that since that matter had been decided without the House having in any way been brought into it, we should not have the ceremony of the Leader of the House going to the Viceroy straight from this House and asking him on behalf of this House to accept the Governor-Generalship. I under-

[Pandit Govind Malaviya.]

stand that he meant only that much and not that we should not have Lord Mountbatten as Governor-General.

Shri Mahavir Tyagi: What I meant was not to record any objection on behalf of the House to the acceptance of Lord Mountbatten as the Governor-General of India. That thing has already been done and if there were any Members in this Honourable House who object to that, they could have sent a Resolution to that effect. I do not want to take up that question in this House. What I was suggesting was that you had better drop the idea of going through that item of the programme in which, you say, on behalf of this House, Lord Mountbatten was to be invited to accept the Governor-Generalship. I think he has already done it and this formality may better be given up, because the House has never discussed this issue and if without the House having considered this issue, he is invited this will be too formal and in my opinion slightly unfair. What I was suggesting was that without disturbing the scheme or without objecting to his being the Governor-General of India, the House may not be committed. He is the Governor-General. He has also accepted the offer and he remains so without any commitment on behalf of this House.

Pandit Govind Malaviya: Sir, I propose that there should be no further discussion on this subject and we should leave it to the President to fix up what he thinks best.

Mr. Tajamul Husain (Bihar: Muslim): May I have your permission Sir, to move a formal Resolution to this effect:

That this house accepts the programme as chalked out by the Honourable the President in connection with the Independence Day Celebration in its entirety?

Mr. President: I do not think it is necessary to put any Resolution to vote like this. I think I shall fix the programme as I said, the details of which I shall work out.

Mr. H. V. Kamath: Will you be so good as to direct the Members of the Assembly shall not be deprived of the right of introducing at least one visitor each on this historic occasion?

Mr. President: It depends upon the accommodation. As I said, we shall do our best to accommodate as many as we can, but if we cannot, we shall devise some means by which all Members will be accommodated in an equitable manner.

An Honourable Member: May I know, Sir, at what time we should come here?

Mr. President: You have to come here on the night of the 14th I shall announce the exact time later on. It will be at midnight.

Mr. H. V. Kamath: About the presentation of the National Flag to every Member, we would be grateful if it could be given before the 15th August.

Mr. President : Purchase a flag each.

Mr. H. V. Kamath : Presentation by you, Sir !

Mr. President : That is a matter which we have to consider. We cannot undertake to provide each member with a flag. It does not seem to be practicable at the present moment.

Shri Ajit Prasad Jain (United Provinces : General) : You said you will draw up a scheme according to which visitors shall be equitably admitted to the House. I would like to know the time when we shall be able to know that scheme.

Mr. President : We shall work it out in a day or two and we shall announce it in the press.

Shri Mahavir Tyagi : In this regard, may I make one suggestion, Sir. Since you say that several personalities have to be invited, and we are also anxious to have our friends to witness this auspicious ceremony I would suggest that instead of holding it here, we may again go to the Old Fort or somewhere else where we can have a big ceremony and a large number of people may be accommodated. Many people in India, who are not in Delhi, may come from outside to witness this occasion. My suggestion therefore is that we may make it a big show and have it somewhere, at some such place where we may have enough accommodation.

Many Honourable Members : No. No.

Mr. President : As we have been holding our session in this Hall, I think we must have this function also in this Hall (*Hear Hear*)

An Honourable Member : I propose that for accommodating more visitors, these adjoining rooms may also be used.

Mr. President : We shall utilise every little bit of space.

There was one thing more which I desired to tell you. We have announced the next session on the night of the 14th and on the morning of the 15th. Notices will be sent out from the office in due course. It is just possible that members may not get notice in time. So they may take this as notice and they may also take whatever is published in the press as notice to them in this regard, and they need not wait for formal notices being delivered to them.

We adjourn now till the 14th.

The Assembly then adjourned till Thursday, the 14th August 1947.